JOHN

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1969

No. 445

STANDARD INDUSTRIES, INC., PETITIONER

v.

TIGRETT INDUSTRIES, INC., ET AL., RESPONDENT

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 8, 1969
CERTIORARI GRANTED OCTOBER 27, 1969

INDEX

	PAGE
Docket Entries, Civil Action No. 1581	1a
Docket Entries, Civil Action No. 1625	6a
Amended Complaint, Civil Action No. 1581	9a
Answer, Civil Action No. 1581	14a
Amended Complaint, Civil Action No. 1625	17a
Answer, Civil Action No. 1625	25a
Order Overruling Defendant's Motion, Civil Action No. 1581	28a
Order Overruling Defendant's Motion to Dismiss, Civil Action No. 1625	30a
Memorandum Decision Denying Plaintiffs' Claim for Reformation in Civil Actions Nos. 1581 and 1625	31a
Order Providing That Three (3%) Percent Royalty, If Due, Will Be Paid to John Burton Tigrett, in Civil Action No. 1625	34a
Order Dismissing Action for Reformation in Civil Action No. 1581	35a
Memorandum Decision of District Court in Civil Actions Nos. 1581 and 1625	37a
Judgment in Civil Action No. 1581	47a
Judgment in Civil Action No. 1625	49a
Order Extending Time to Docket Record on Appeal in Civil Actions Nos. 1581 and 1625	51a
Docket Entries—United States Court of Appeals for the Sixth Circuit:	
Case No. 18700	53a-1
Case No. 18701	53a-3
Case No. 18702	53a-5
Case No. 18703	53a-7

PAGE

Decision of the United States Court of Appeals for the Sixth Circuit Case Nos. 18,700-18,703 ..... 53a-9

Docket Entries—Supreme Court of the United States 53a-12

Contract for Purchase of Assets 54a

Letter of Transmittal ..... 64a.

Notice of Assignment 66a

Assignment for the Benefit of Creditors Between Tigrett Industries, Inc. and Its Creditors 67a

Assignment of Patent Rights by Tigrett Industries, Inc. of U. S. Letters Patent No. 3,162,865 ..... 76a

File History of United States Letters Patent No. 3,162,865 ..... 81a

Copy of United States Letters Patent No. 3,162,865 118a

Copy of U. S. Letters Patent No. 2,873,458 ..... 120a

Plaintiffs' Exhibit 53, Photograph 122a

Plaintiffs' Exhibit 54, Photograph 124a

Plaintiff's Exhibit 55, Photograph 126a

Excerpts From Transcript of Proceedings 128a

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

Witnesses for Plaintiffs

Ed Terry:

Direct 129a

Cross 129a-1

PAGE

Don Fischer:

Direct 131a

Cross 145a

Redirect 155a

Recross 158a

WITNESS FOR DEFENDANT

Thomas Fletcher Talbot:

Cross 159a

Docket Entries, Civil Action No. 13381

1. June 16, 1965—Filed Complaint
2. July 2, 1965 —Filed Motion of Defendant for an Order of Dismissal under Rule 12 (b) of Rules of Civil Procedure or in the alternative for an Order transferring this action to U. S. District Court—Southern Dist. of N. Y. pursuant to 28 USC 1404(a)
3. July 13, 1965 —Filed Notice to take Depositions of Biel, Branca, Schumer, and Michael—
4. July 20, 1965 —Filed Order for production of documents and things for inspection, copying and photographing on Motion of Plaintiff.
5. July 20, 1965 —Filed Order overruling Motion to Vacate Notice of Taking testimony—(the defendant having so moved)
6. July 20, 1965 —Filed Motion to Vacate Notice of Taking Testimony pursuant to Rule 30(b) on behalf of defendant—
7. July 20, 1965 —Filed Notice to take Depositions (Michael, Branca & Biel) on behalf of Plaintiffs—
8. July 28, 1965 —Filed Order amending order for production of documents and things for inspection, copying or photographing—
9. July 28, 1965 —Filed Order overruling defendant's Motion for an order vacating notice of taking testimony

Docket Entries, Civil Action No. 1581

10. Aug. 31, 1965 —Filed Notice of Plaintiff to take depositions of Joseph Lawless, President, Jackson Furniture Corp.

11. Nov. 22, 1965 —Filed Application by plaintiffs for preliminary hearing on defendant's Motion—

12. Nov. 22, 1965 —Filed Affidavit of John Burton Tigrett—Chairman of Board of Tigrett Industries, Inc.

13. Dec. 7, 1965 —Filed Replying Affidavit in behalf of deft. to application by plaintiff requesting hearing on deft's Motion.

14. Dec. 11, 1965 —Filed Deposition of Joseph F. Lawless.

15. Dec. 11, 1965 —Filed examinations of Jacob Michael, William Biel and S. Lee Branca.

16. Dec. 20, 1965 —Filed Notice to take Deposition of Mr. Joseph Lawless, Pres. Jackson Furniture Corp.

17. Dec. 20, 1965 —Filed Order extending time for defendant to plead to and including 1-6-66—

18. Dec. 20, 1965 —Filed Order overruling defendant's motion for change of venue—opinion of Court being that it is not in the interest of justice to transfer the case to another District

19. Dec. 27, 1965 —Filed Motion to Vacate Notice of taking testimony of Lawless pursuant to Rule 30(b)—

Docket Entries, Civil Action No. 1581

20. Dec. 28, 1965 —Filed Motion to vacate notice of taking testimony of Lawless pursuant to Rule 30(b)—

21. Jan. 6, 1966 —Filed Motion by defendant for more definite statement—

22. Jan. 6, 1966 —Filed Application by Plaintiff for hearing on defendant's Motion—

23. Jan. 10, 1966 —Filed Moving Affidavit of Lawless—Pres. Jackson Furniture Corp—

24. Jan. 10, 1966 —Filed Supplemental Motion to quash spa for Lawless.

25. Jan. 11, 1966 —Filed Order overruling defendant's motion to vacate notice of taking testimony.

26. Jan. 11, 1966 —Filed Order overruling Motion of Witness to vacate notice of taking testimony.

27. Jan. 12, 1966 —Filed Order sustaining Motion of Plaintiffs to strike motion by defendant for more definite statement, and requiring defendant to plead.

28. Jan. 20, 1966 —Filed Notice to take depositions—Joseph Lawless, Pres. Jackson Furniture Corp—Albert Stone and James Cupples—

29. Jan. 25, 1966 —Filed Answer of Defendant—

30. Feb. 4, 1966 —Filed Interrogatories to Plaintiff—

31. Feb. 14, 1966 —Filed Notice of hearing—

Docket Entries, Civil Action No. 1581

32. Feb. 14, 1966 —Filed Objections to Defendant's Interrogatories—

33. Feb. 14, 1966 —Filed Notice of hearing—

34. Feb. 14, 1966 —Filed Objections to Defendant's Interrogatories—

35. Feb. 18, 1966 —Filed Answers to Interrogatories—

36. May 23, 1966 —Filed Motion of Plaintiffs to Amded Complaint

37. June 15, 1966 —Filed Motion of Plaintiffs to Amend previously filed Motion—

38. June 23, 1966 —Filed Order allowing plaintiffs to file amended complaint—

39. July 8, 1966 —Filed Amended Complaint—

40. Aug. 9, 1966 —Filed Order allowing defendant to Aug. 18, 1966 to assert its defense and objections, either by serving its answer or by motion—

41. Aug. 19, 1966 —Filed Defendant's Answer to amended complaint—

42. Nov. 21, 1966 —Filed Memorandum Decision—

43. Dec. 9, 1966 —Filed Order dismissing amended complaint insofar as it seeks reformation of contract (Ex. 1)

44. June 20, 1967 —Filed Reporter's Transcripts of hearings Apr. 5, 6, 1967—

45. Dec. 27, 1967 —Filed Memorandum Decision—

46. Jan. 23, 1968 —Filed Notice of Appeal—

47. Jan. 23, 1968 —Filed Appeal Bond—

Docket Entries, Civil Action No. 1581

48. Feb. 26, 1968 —Filed Notice of filing of Judgment—

49. March 11, 1968—Filed Judgment—

50. March 22, 1968—Filed Notice of Taking Deposition of Jim DeMattei—

51. Apr. 2, 1968 —Filed Notice of taking Deposition of Will H. Foster—

52. Apr. 5, 1968 —Filed Notice of Appeal—

53. Apr. 5, 1968 —Filed Appeal Bond—

54. Apr. 15, 1968 —Filed Discovery Deposition of James V. Dematie—

55. Apr. 19, 1968 —Filed Order that Notice of Appeal filed on Apr. 5, 1968—be filing date of notice of appeal—that the time for further perfecting of appeal shall begin from that date—the previous notice having been prematurely filed—

56. Apr. 23, 1968 —Filed Stipulation regarding Judgment—approved by Court—

57. May 13, 1968 —Filed Supersedeas Bond approved by Court—

58. May 14, 1968 —Filed letter to Court Reporter—from Attorneys for Defendant in regard transcript—

59. May 14, 1968 —Filed letter to Court—from Attorneys for Plaintiffs opposing extension of time for docketing record on appeal.

60. May 14, 1968 —Filed Order extending time to docket record on appeal to May 20, 1968.

Docket Entries, Civil Action No. 1625

1. Dec. 27, 1965 —Filed Complaint—
2. Jan. 17, 1966 —Filed Motion of defendant to Dismiss under Rule 12 and moving Affidavit—
3. Jan. 17, 1966 —Filed Application by Plaintiff for preliminary hearing on defendant's Motion—
4. Jan. 18, 1966 —Filed Affidavit of John Burton Tigrett.
5. Feb. 18, 1966 —Filed Stipulation regarding issues.
6. Feb. 21, 1966 —Filed Order overruling Defendant's Motion to Dismiss.
7. March 2, 1966 —Filed Order extending time for defendant to answer until 3-14-66.
8. Apr. 6, 1966 —Filed Answer of Defendant.
9. May 23, 1966 —Filed Motion of Plaintiff to Amend Complaint.
10. June 15, 1966 —Filed Motion to Amend Complaint.
11. June 23, 1966 —Filed Order allowing plaintiff to file amended complaint—to be incorporated with original complaint—and defendant given 30 days after service to answer.
12. July 8, 1966 —Filed Amended Complaint—
13. Aug. 9, 1966 —Filed Order allowing defendant to Aug. 18, 1966 to assert its defenses and objections either by serving its answer or by motion.

Docket Entries, Civil Action No. 1625

14. Aug. 19, 1966 —Filed defendant's answer.

15. Nov. 21, 1966 —Filed Memorandum Decision.

16. Dec. 9, 1966 —Filed Order that amended complaint of plaintiff—sustained to extent that it seeks reformation to provide that the 3% royalty, if due, will be paid to the said John Burton Tigrett and said amended complaint will be dismissed to the extent that it seeks reformation of the contract (Ex. 1) as to the basis of the payments due the plaintiff.

17. June 20, 1967 —Filed Court Reporter's Transcript of Apr. 5 & 6, 1967.

18. Dec. 27, 1967 —Filed Memorandum Decision—

19. Jan. 23, 1968 —Filed Notice of Appeal—

20. Jan. 23, 1968 —Filed Appeal Bond—

21. Feb. 26, 1968 —Filed Notice of filing of Judgment—

22. March 11, 1968—Filed Judgment—

23. March 22, 1968—Filed Notice of Taking of Deposition of Jim DeMattei—

24. Apr. 2, 1968 —Filed Notice of Taking of Deposition of Will H. Foster—

25. Apr. 5, 1968 —Filed Notice of Appeal—

26. Apr. 5, 1968 —Filed Appeal Bond—

27. Apr. 15, 1968 —Filed Discovery Deposition of James V. Dematie—

Docket Entries, Civil Action No. 1625

28. Apr. 19, 1968 —Filed Order that notice of appeal filed on Apr. 5, 1968 be filing date of notice of appeal and that the time for further perfecting of appeal shall begin from that date—the previous notice having been prematurely filed.

29. Apr. 23, 1968 —Filed Stipulation regarding Judgment—

30. May 13, 1968 —Filed Supersedeas Bond—

31. May 14, 1968 —Filed letter to Court Reporter from Attys. for Deft. in regard transcript—

32. May 14, 1968 —Filed letter to Court from Attys for Pltffs. opposing extension of time for docketing record on appeal—

33. May 14, 1968 —Filed Order extending time to docket record on appeal to May 20th, 1968.

Amended Complaint, Civil Action No. 1581

The plaintiffs allege that:

1. The plaintiff, Tigrett Industries, Inc., is a Delaware corporation, having its principal place of business in Jackson, in the State of Tennessee. The plaintiffs, First National Bank of Jackson, Tennessee, and National Bank of Commerce, of Jackson, Tennessee, are corporations and citizens of the State of Tennessee. The defendant, Standard Industries, Inc., is a corporation and a citizen of the State of New York and does not have its principal place of business in Tennessee. The matter in controversy exceeds Ten Thousand ($10,000.00) Dollars, exclusive of interest and costs.

2. The claim of the plaintiffs for the relief sought in this action arises from the transaction of business, and from the ownership and possession of an interest in property by the defendant, in Tennessee, within the meaning of Chapter 67 of the Public Acts of Tennessee of 1965 and other laws of the State of Tennessee creating in personam jurisdiction over the defendant by service of process through the Secretary of State of Tennessee.

3. Tigrett Industries, Inc. entered into a contract with Standard Industries, Inc., on the 25th day of November, 1964, an exact copy of which contract is annexed hereto and made Exhibit 1 to this complaint. The aforesaid contract was for the purchase of the assets of the Infant Products Division of Tigrett Industries, Inc., as an operating and going concern, in consideration of the payments therein agreed upon.

4. Plaintiffs allege that Tigrett Industries, Inc., by a duly authorized and validly executed assignment, did convey and assign unto the First National Bank of Jackson, Tennessee and the National Bank of Commerce, of Jack-

son, Tennessee, as trustees, its right to the payments, or "override" to which it was entitled under the contract made Exhibit 1 to this complaint. An exact copy of the aforesaid assignment is annexed hereto and made Exhibit 2 to this complaint.

5. Plaintiffs allege that the defendant, Standard Industries, Inc., is obligated, under its aforesaid contract, to pay to Tigrett Industries, Inc., as a part of the purchase price, an override of 2% of the gross sales of the products covered by said contract and known in the industry as,

The Play-A-Round
The Thru-the-Door
The 38 x 38
The Golden Convertible
The Expander
The Tag-A-Long

Plaintiffs allege that defendant is obligated to make such payments quarterly without any deduction, for a period of five years from the date of the closing of the sale.

6. Plaintiffs allege that the defendant, Standard Industries, Inc., has failed and refused, and still refuses to make the payments referred to as "override", required of them by the contract, and that the defendant has refused and declined to permit plaintiffs or their duly authorized representative to inspect its books and records, covering the manufacture, distribution and sale of the aforesaid products, except with respect to The Golden Convertible, The Tag-A-Long and The Expander. Plaintiffs, therefore, allege that the defendant has breached the aforesaid provisions of its contract and is now in default with respect to the payments now due to the plaintiffs.

Amended Complaint, Civil Action No. 1581

7. Plaintiffs further allege that the defendant, Standard Industries, Inc., contemporaneously with the purchase of the Infants Products Division of Tigrett Industries, Inc., did cause to be created a subsidiary corporation, known as Jackson Furniture Corporation, for the purpose of continuing the operations of the plant and facilities acquired by it, and said Jackson Furniture Corporation is now engaged in the manufacture and sale of the aforesaid items of infant furniture, but under the direction, control and management of the defendant. At the direction of the defendant, to facilitate the transfer of ownership without interruption and as a going concern, Tigrett Industries, Inc., transferred and conveyed the physical assets of the Infant Products Division of Tigrett Industries, Inc., directly to the Jackson Furniture Corporation.

8. That prior to the 25th day of November, 1964, the plaintiff, Tigrett Industries, Inc., hereinafter called Tigrett, and the defendant entered into certain conversations and negotiations pertaining to the execution of the aforesaid contract for the sale and purchase of the assets of the Infant Products Division of Tigrett, as an operating and going concern, from Tigrett by the defendant; that as a result of said conversations and negotiations, it was orally agreed between the parties hereto, among other things, that as part of the purchase price of the assets and business, the defendant would pay to the plaintiff Tigrett, for a term of five years an override of two (2%) per cent of the gross selling price of the products then being manufactured and sold by Tigrett, namely: The Play-A-Round; Thru-The-Door; 38 x 38; The Golden Convertible; The Expander, and The Tag-A-Long.

That by mutual mistake of the parties, or at least by the mistake on the part of the plaintiff and inequitable conduct on the part of the defendant, said written contract hereinbefore set forth did not fully and truly express the intention

and meaning of the parties as to the payment of the two (2%) per cent override on specifically named and manufactured products, which were manufactured by and were part of the business being sold by Tigrett to Standard.

That said mutual mistake or mistake and inequitable conduct consisted of ambiguously expressing the payment of the two (2%) per cent sales price override relative to the use of certain patents sold by Tigrett to Standard on a covered product basis, rather than explicitly expressing it in clear and precise language that the two (2%) per cent override was to be paid as part of the purchase price of the assets of Tigrett, and was to be paid specifically as it related to certain named, described and existing products, without regard to patents.

And that by mutual mistake of the parties, the written contract hereinbefore set forth did not fully and truly express the intention and meaning of the parties as to who was to be the recipient of the three (3%) per cent and the two (2%) per cent royalty and override payments.

That said mutual mistake consisted of ambiguously expressing in said contract that Standard Industries, Inc. was to pay both the said three (3%) per cent and two (2%) per cent royalty and override payments to the plaintiff, Tigrett Industries rather than explicitly stating that Standard was to pay the three (3%) per cent royalty payments to John Burton Tigrett, and the two (2%) per cent override payments to the plaintiff, Tigrett Industries.

7. Exhibits 1 and 2, filed with the original Complaint, are to be considered as filed as Exhibits to this Amended Complaint and treated as a part hereof.

Wherefore, the plaintiffs demand judgment,

1. Praying that the contract be reformed to fully express the intent of the parties.

2. That upon the contract being so reformed, for an accounting, and for the payments due under the contract as reformed.

3. For such other sums as the defendant may be found, on accounting, to be indebted to the plaintiffs under said reformed contract.

4. For such damages as plaintiffs have sustained as a result of the willful refusal and failure of defendant to perform its obligations under the aforesaid contract, as reformed, and

5. For the specific performance by the defendant of its duties and obligations under said reformed contract in the future.

6. In the alternative should reformation be denied, for the specific performance by the defendant of its duties and obligations under the original contract, and for such further and other relief as the plaintiffs may be entitled to.

Moss & Benton
First National Bank Building
Jackson, Tennessee

L. L. Pennebaker
National Bank of Commerce Building
Jackson, Tennessee

Waldrop, Hall & Perkins
106 S. Liberty
Jackson, Tennessee

Murchison & Murchison
Bond Building
Jackson, Tennessee

Ralph Kaiser
721 Olive Street
St. Louis, Missouri

Answer, Civil Action No. 1381

Defendant, answering the amended complaint herein, respectfully shows to the Court and alleges:

First: Defendant admits the allegations in Paragraph 1 and 3 of the amended complaint, except as to the matter in controversy exceeding Ten Thousand ($10,000.00) Dollars, exclusive of interest and cost, which it denies.

Second: Defendant denies each and every allegation contained in paragraphs 2, 4, 5, 6, 7 and 8 of the amended complaint.

As and for a First Separate, Distinct and Complete Defense, Defendant Alleges:

That the defendant denies that the Court has jurisdiction of this case insofar as the amended complaint seeks to reform a written contract.

As and for a Second Separate, Distinct and Complete Defense, Defendant Alleges:

That the said John Burton Tigrett and Hewitt Tomlin, Jr. were not authorized to make any agreement, either written or oral, binding the Plaintiff Corporation. Defendant further alleges the contract constituting Exhibit 1 to the original complaint, and Exhibit 1 of the amended complaint herein, or any oral agreement alleged to have been entered into by the parties, was not authorized by an authorized resolution of the Board of Directors of the Plaintiff Corporation, nor by an authorized resolution of the Stockholders of the Plaintiff Corporation.

Answer, Civil Action No. 1581

As and for a Third Separate Distinct and Complete Defense, Defendant Alleges:

That the aforesaid contract constituting Exhibit 1 to the original and amended complaint sets forth the only agreement and contract entered into between Tigrett Industries, Inc. and Standard Industries, Inc. and said contract was entered into in good faith by Defendant Corporation and fully expresses the intentions and meaning of the parties.

As and for a Fourth Separate, Distinct and Complete Defense, Defendant Alleges:

That the defendant denies that the Plaintiff Corporation and the Defendant Corporation were mistaken as to the language, contents, and the meaning of the aforesaid contract.

As and for a Fifth Separate, Distinct and Complete Defense, Defendant Alleges:

That the defendant denies that there was a mutual mistake between the Plaintiff Corporation and Defendant Corporation in the execution of the aforesaid contract and the intention of the parties with reference to same, and further denies that the Defendant Corporation, was guilty of inequitable conduct whatsoever in the negotiation thereof and execution of the aforesaid contract.

As and for a Sixth Separate Distinct and Complete Defense, Defendant Alleges:

That the defendant denies that there existed between the Plaintiff Corporation and Defendant Corporation any

agreements or contracts other than the aforesaid contract marked Exhibit 1 to the original amended complaint.

As and for a Seventh Separate, Distinct and Complete Defense, Defendant Alleges:

That the defendant denies that it has failed and refused to pay the royalties to the Plaintiff Corporation, as alleged, and denies further that it has breached any provisions of the aforesaid contract and denies that it is indebted to the Plaintiff Corporation in any amount whatsoever.

WHEREFORE, Defendant prays that the amended complaint herein be dismissed with costs.

STANDARD INDUSTRIES, INC.
By DIAMOND & HOLT
Diamond and Holt

To:

WALDROP HALL & TOMLIN, ESQS.
MURCHISON & MURCHISON, ESQS.

Amended Complaint, Civil Action No. 1625

Plaintiff, for his cause of action, states that:

1. Plaintiff, John Burton Tigrett, is presently and has at all times mentioned herein, been a resident of the City of Jackson, County of Madison, State of Tennessee, and is a citizen of the State of Tennessee.

2. Defendant, Standard Industries, Inc., is a corporation existing under and by virtue of the laws of the State of New York, and does not have its principal place of business in Tennessee.

3. The jurisdiction of this cause depends by reason of this suit being of a civil nature between citizens of different States, in which the amount in controversy, exclusive of interests and costs, exceeds of the sum of Ten Thousand Dollars ($10,000.00) under Title 28 of the United States Code, Section 1332.

4. The claim of plaintiff for the relief sought in this action arises from the transaction of business and from the ownership or possession of an interest in property of the defendant in Tennessee, within the meaning of Chapter 67, of the Public Acts of Tennessee of 1965, and other laws of the State of Tennessee creating in personam jurisdiction over the defendant by service of process through the Secretary of State of Tennessee.

5. Plaintiff was the originator, inventor or co-inventor of numerous articles of infant furniture, including play pens and nursery units, upon some of which patent applications had been filed and United States Letters Patent issued, such as, for example only, Nos. 2,790,978, 3,162,865 and 3,162,866.

6. Plaintiff had, prior to November 25, 1964, entered into agreements with Tigrett Industries, Inc., a corporation of the State of Delaware, having its principal place of business in the City of Jackson, State of Tennessee, for the purpose of according the said Tigrett Industries, Inc., and more particularly the Infant Production Division thereof, the exclusive right and license to manufacture, use and sell his developments and inventions in infant furniture, including play pens and nursery units upon an agreed royalty for the purpose of furthering the business of Tigrett Industries, Inc., which did actively produce, offer for sale and sell infant furniture developed and/or invented by plaintiff, which products achieved a wide acceptance in the trade among the purchasing public and among which products were those identified by Tigrett Industries, Inc., as:

The Play-A-Round
The Through-The-Door
The 38 x 38
The Golden Convertible
The Expander

The said items provided the basic products of Tigrett Industries, Inc., and the foundation upon which the business was built.

7. Tigress Industries, Inc. did pay plaintiff the agreed upon royalty upon the selling price of each play pen and nursery unit which it produced and sold upon the agreed understanding that the same were covered by the aforesaid letters patent. At no time was there any controversy between plaintiff and Tigrett Industries, Inc., relative to the question of coverage of any one or all of the aforesaid

patents, as both plaintiff and Tigrett Industries, Inc., recognized the right of plaintiff to royalties by reason of his having originated and developed the said items which formed the foundation of the business of Tigrett Industries, Inc. Tigrett Industries, Inc. did, in selling the aforesaid items, utilize the numbers of the patents in question for notifying the public and did, in all respects, accept without controversy the scope of said patents.

8. The said Tigrett Industries, Inc., on November 25, 1964, entered into a contract with defendant, Standard Industries, Inc., a copy of which contract is annexed hereto and made Exhibit 1 to this complaint. The aforesaid contract was for the purchase of the assets of the Infant Products Division of the said Tigrett Industries, Inc., as an operating and going concern in consideration of the payments therein agreed upon.

9. As part of the consideration for the aforesaid purchase by Standard Industries, Inc., Tigrett Industries, Inc., agreed to assign and transfer to defendant all agreements with respect to developments and/or inventions of plaintiff under which Tigrett Industries, Inc. had been operating, including the above-identified products.

10. Plaintiff, in his individual capacity, was also a party to the aforesaid agreement of November 25, 1965, and thereby assented to and confirmed the transfer of the aforesaid agreements under the said patents to defendant, Standard Industries, Inc., in order that it might continue the business of Tigrett Industries, Inc., uninterruptedly and unrestrictedly for producing and selling the said products developed and/or invented by plaintiff, including those which had been fully developed by plaintiff but were not in commercial production at the time of said agreement.

Amended Complaint, Civil Action No. 1625

11. Prior to November 25, 1964, plaintiff, in both his individual capacity and as an agent of Tigrett Industries, Inc., did confer extensively, enter into conversations and negotiations with, agents of Standard Industries, Inc., pertaining to the purchasing of the assets of the Infant Products Division of Tigrett Industries, Inc., as an operating and going concern, and especially with respect to the patents under which Tigrett Industries, Inc. had so long and consistently operated. Plaintiff freely and openly showed all of the patents in question to agents of Standard Industries, Inc., giving them all information thereof so that they might investigate subject patents, if they desired. In discussing particularly Patent No. 2,790,978, plaintiff explained that it was his understanding of the same that it related to the so-called U-bolt construction, which feature related to the cooperation between the legs of the various play pens and the bases thereof, and which particular feature was incorporated in each of the play pens produced and sold by Tigrett Industries, Inc., being identified by the names hereinabove set forth, as well as other play pens such as the "36 x 36," the "Little Traveler", and others which were fully developed for commercial production at the time of said negotiations; all of said products being fully disclosed to Standard Industries, Inc. During the aforesaid negotiations, both plaintiff and defendant accepted the said United States Letters Patent No. 2,790,978 as relating to the U-bolt construction, agreeing for purposes of the agreement in order to provide the bargained for compensation, that the term "U-bolt construction" was merely a designation for conveniently expressing the obligation of royalty payments on all such play pens incorporating such structural feature, and did jointly state in the aforesaid agreement, at paragraph 16(c) the following:

> "On Patent No. 2,790,978, issued May 7, 1957, expiring May 7, 1974, assigned to C. B. Whitlow,

covering U-bolt construction, * * *" (emphasis ours).

12. Plaintiff alleges that defendant, Standard Industries, Inc., is obliged, under the aforesaid agreement dated November 25, 1964, to pay to plaintiff for the aforesaid assignment a royalty of three per cent (3%) of the sale price on the sale of the products agreed by the parties to be covered by said assignments and known in the industry as:

The Play-A-Round
The Through-The-Door
The 38 x 38
The Golden Convertible
The Expander
Little Traveler
The 36 x 36

Each of which incorporates the U-bolt construction as understood by the parties hereto. Plaintiff alleges that defendant is obligated to make such payments quarterly without any deduction for the full term of the assignments.

13. Defendant, Standard Industries, Inc., contemporaneously with the purchase of the Infant's Products Division of Tigrett Industries, Inc., did cause to be created a subsidiary corporation known as the Jackson Furniture Corporation for the purpose of continuing the operations of the plant and facilities acquired by defendant from Tigrett Industries, Inc., and said Jackson Furniture Corporation is now engaged in the manufacture and sale of the aforesaid items of Infant Furniture, including the said play pens and nursery units, as may be readily noted from the advertising sheet published by the Jackson Furniture Corporation and setting forth thereon certain of the said patents herein involved; said sheet being marked Exhibit

2 and being made a part of this complaint. The said Jackson Furniture Corporation is nothing more than an alter ego of defendant, Standard Industries, Inc., operating strictly and totally under the immediate direction, control and management of defendant and, therefore, is only a shell within which defendant actively carries on its business in this District and State.

14. Defendant, Standard Industries, Inc., has failed and refused, and still refuses to pay the royalties provided for in the said agreement of November 25, 1964, to plaintiff, upon the sale of the said products specified in paragraph 10 above. Therefore, defendant has breached the provisions of its contract and is now in default with respect to the royalties now due to plaintiff.

15. Defendant, Standard Industries, Inc., asserts that its refusal to pay the royalties provided in said agreement is based upon its opinion that the claims of the patents assigned do not cover the aforesaid products, and is in complete defiance of its agreement as to its obligation to pay upon devices incorporating the said U-bolt construction.

16a. That by mutual mistake of the parties, or at least by the mistake on the part of the plaintiff, and inequitable conduct on the part of the defendant, said contract for the purchase of the assets of the Infant Products Division of Tigrett Industries, Inc. by defendant did not fully and truly express the intention and meaning of the parties as to the payment of the three per cent (3%) royalty on the specifically named and manufactured products, as well as completed model constructions readied for commercial production which incorporated the U-bolt construction, such as, for instance, the "Little Traveler" and the "36 x 36", which were part of the business being sold by Tigrett Industries, Inc., to Standard Industries, Inc.

b. That said mutual mistake, or mistakes, and inequitable conduct consisted of ambiguously expressing the payment of the three per cent (3%) royalty as both a royalty under an exclusive patent license as well as being a payment upon a specific type of construction, rather than explicitly expressing in direct language that the three per cent (3%) royalty was to be paid upon the products incorporating the agreed upon U-bolt construction by reason of the understanding of the parties as aforesaid.

c. And that by mutual mistake of the parties, the written contract hereinbefore set forth did not fully and truly express the intention and meaning of the parties as to who was to be the recipient of the three (3%) per cent and the two (2%) per cent royalty and override payments.

That said mutual mistake consisted of ambiguously expressing in said contract that Standard Industries, Inc. was to pay both the said three (3%) per cent royalty and two (2%) per cent override payments to Tigrett Industries, Inc., rather than explicitly stating that Standard Industries, Inc. was to pay the three (3%) per cent royalty to plaintiff, John Burton Tigrett and the two (2%) per cent override payment to Tigrett Industries, Inc.

17. Plaintiff alleges that defendant, Standard Industries, Inc., has defaulted in the making of the accounting and the royalties provided in the contract with plaintiff and Tigrett Industries, Inc., and plaintiff is, therefore, entitled to a judgment for the amount of royalties which have accrued to date and to the specific performance of said contract in the future.

18. Exhibits 1 and 2 are to be considered as filed as a part of this Amended Complaint since the same are identical to the corresponding Exhibits filed with the original complaint in this cause.

Amended Complaint, Civil Action No. 1625

WHEREFORE, plaintiff prays:

1. That the contract be reformed to fully express the intent of the parties.

2. That upon the contract being so reformed, for an accounting, and for the payments due under the contract as reformed.

3. For such other sums as the defendant may be found, on accounting, to be indebted to the plaintiff under said reformed contract.

4. For such damages as plaintiff has sustained as a result of the willful refusal and failure of defendant to perform its obligations under the aforesaid contract, as reformed, and

5. For the specific performance by the defendant of its duties and obligations under said reformed contract in the future.

6. In the alternative should reformation be denied, for the specific performance by the defendant of its duties and obligations under the original contract, and for such further and other relief as the plaintiff may be entitled to.

RALPH W. KALASH
721 Olive Street
St. Louis, Missouri 63101

WALDROP, HALL & TOMLAN
By HEWETT TOMLAN
106 South Liberty Street
Jackson, Tennessee

MURCHISON and MURCHISON
By CARMACK MURCHISON
P. O. Box 1830
Jackson, Tennessee
Attorneys for Plaintiff

Answer, Civil Action No. 1625

Defendant, answering the amended complaint herein, respectfully shows to the Court and alleges:

First: Defendant admits the allegations of Paragraphs 1 and 2 of the complaint.

Second: Defendant denies each and every allegation in Paragraphs 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, and 16 of the complaint.

As and for a First Separate, Distinct and Complete Defense, Defendant Alleges:

The defendant denies that the Court has jurisdiction of this case insofar as the amended complaint seeks to reform a written contract.

As and for a Second Separate, Distinct and Complete Defense, Defendant Alleges:

That the said John Burton Tigrett is not the owner, nor does he have title in and to the patents and products alleged in the complaint, nor does he have any interest therein.

As and for a Third Separate, Distinct and Complete Defense, Defendant Alleges:

That the defendant has not utilized nor has its subsidiary, Jackson Furniture Corporation, utilized any products, inventions, or patents alleged to be owned by the plaintiff in the complaint.

Answer, Civil Action No. 2028

As and for a Fourth Separate Distinct and Complete Defense, Defendant Alleges:

That the contract alleged in Paragraph 5 of the complaint and made Exhibit 1 to the same sets forth the only agreement and contract entered into between Tigrett Industries, Inc. and Standard Industries, Inc. and said contract was entered into in good faith and fully expresses the intentions and meaning of the parties.

As and for a Fifth Separate, Distinct and Complete Defense, Defendant Alleges:

That the defendant denies that the parties were mistaken as to language, contents, and the meaning of the aforesaid agreement.

As and for a Sixth Separate, Distinct and Complete Defense, Defendant Alleges:

That the defendant denies that there was a mutual mistake between Tigrett Industries, Inc. and defendant, or that the defendant was guilty of any inequitable conduct whatsoever in negotiation of and execution of the aforesaid agreement, and that said contract fully and truly expresses the intentions and meaning of the parties.

As and for a Seventh Separate, Distinct and Complete Defense, Defendant Alleges:

That the defendant denies that there existed between the Plaintiff Corporation and Defendant Corporation any

agreement or contract other than the aforesaid contract marked Exhibit 1 to the original and amended complaint.

As and for a Eight Separate, Distinct and Complete Defense, Defendant Alleges:

That the defendant denies that it has failed and refused to pay the royalties to the plaintiff as alleged, and denies further that it has breached any provisions of the aforesaid agreement and denies that it is indebted to the plaintiff in any amount whatsoever.

WHEREFORE, Defendant prays that the amended complaint herein be dismissed with costs.

STANDARD INDUSTRIES, INC.
By DIAMOND & HOLT
Diamond and Holt

To:

WALDROP HALL & TOMLIN, ESQS.
MURCHISON & MURCHISON, ESQS.

Order Overruling Defendant's Motion. Civil Action No. 1581

This cause came on for hearing on the 17th day of December, 1965, on defendant's motion to dismiss the complaint, or in the alternative to transfer the action to another District, and the court having considered the proof, presented in the form of affidavits and depositions and witnesses in open court, and having heard the argument of counsel and being fully advised,

THE COURT IS OF THE OPINION that it properly has jurisdiction of the action filed herein, pursuant to and in accordance with Section 20.235, subsections (a), (c) and (d), TCA; and the court finds further that it properly has jurisdiction of the defendant subject to and pursuant to the provisions of Section 20.220 TCA, as under the facts shown the defendant was "doing business" in this state at the time the suit was filed, and that the suit relates to a transaction had in whole or in part with in this state, and further that under the facts as shown, the defendant's subsidiary, Jackson Furniture Corporation, is an alter ego or agent of the defendant corporation.

The court further finds that the proper venue for this action is in the Western District of Tennessee, as prescribed for under Title 28 1391, USCA for the reason that, as under the facts shown, the defendant's subsidiary, Jackson Furniture Corporation, is the alter ego or agent of the defendant, therefore the defendant corporation is considered to be doing business within this Federal District.

That concerning defendant's motion to transfer the case to another Federal District, in accordance with the provisions of Title 28 1404, USCA it is the opinion of the

Order Overruling Defendant's Motion
Civil Action No. 1581

court that it is not in the interest of justice to transfer the case to another District Court.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the court that the defendant's motion be as to all matters denied.

Dated: December 29th, 1965.

(Illegible)
United States District Judge

Approved for Entry:

WALDROP, HALL & TOMLIN
By (Illegible) TOMLIN

MURCHISON & MURCHISON
By (Illegible) MURCHISON (HT)
Attorneys for Plaintiff, Tigrett Industries

HANCOCK & MANHEIN
By CHARLES L. HANCOCK
Attorneys for Defendant

Order Overruling Defendant's Motion to Dismiss. Civil Action No. 1625

THIS CAUSE came to be heard on this day, on defendant's motion to dismiss for lack of jurisdiction of the defendant, insufficiency of service of process, and a former suit pending involving the same subject matter.

It being stipulated by the parties that grounds 1 and 2 of the defendant's motion to dismiss present the same questions as to lack of jurisdiction and invalidity of the service of process as raised by similar motion to dismiss in *Tigrett Industries, Inc. et al. v. Standard Industries, Inc.*, Civil Action No. 1581, and that the record made on these issues in Civil Action No. 1581 may be considered in disposing of these grounds of this motion, and the Court having fully considered the record made in Civil Action No. 1581 and being fully advised;

THE COURT IS OF THE OPINION that it properly has jurisdiction of this action pursuant to and in accordance with Sec. 20-235 T. C. A., and the Court further finds that it properly has jurisdiction of the defendant subject to the provisions of Sec. 20-220 T. C. A. since under the facts shown the defendant was "doing business" in this state at the time the suit was filed; and that service of process was properly had pursuant to Sec. 20-235 T. C. A.;

THE COURT IS FURTHER OF THE OPINION that the third ground set forth in defendant's motion, which is that this action should be dismissed because there is a similar suit pending involving the same subject matter, is not well taken.

Memorandum Decision Denying Plaintiffs' Claim for Reformation in Civil Actions Nos. 1581 and 1625

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the defendant's motion in all respects be and the same is hereby overruled.

This 21st day of February, 1966.

(Illegible)
United States District Judge

Memorandum Decision Denying Plaintiffs' Claim for Reformation in Civil Actions Nos. 1581 and 1625

In these cases, plaintiffs originally sued on a contract between Tigrett Industries, Inc. and defendant, asserting in substance that plaintiffs were not being paid the monies to which they were entitled under this contract. Defendant filed answers, denying that it was failing to pay what was due under this contract. At this stage of the proceedings, it appeared that the only real issue would be to what extent defendant (or its subsidiary) was using the patents named in the contract. However, plaintiffs thereafter amended their complaints, seeking reformation of this contract. As indicated by its amended complaint and statements of plaintiffs' counsel, Tigrett Industries seeks to reform the contract to provide that defendant would be obligated to pay to it (or its assignees) 2% of the sales price of all products of the type which had been manufactured by Tigrett Industries prior to the transfer to defendant. John B. Tigrett seeks to reform the contract to provide (a) that defendant would be obligated to pay 3%

Memorandum Decision Denying Plaintiffs' Claim for Reformation in Civil Actions Nos. 1581 and 1625

of the sales price of all products making use of the "construction" or the "inventions" referred to in the contract and (b) that this royalty would be payable to him rather than to Tigrett Industries (or its assignees). It should appear clear that, if the rights of the parties are to be determined by the contract as it was executed, the main issue would be, as heretofore stated, whether defendant's subsidiary was working within the claims of these patents, but that if their rights are to be determined by the contract as reformed in accordance with plaintiffs' contentions, the question whether defendant's subsidiary was working within the claims of the patents would have little, if any, importance. We therefore have heard the reformation claim initially and separately.

At the hearing all parties agreed that to the extent the 3% royalty was to be paid, it would be paid to Mr. Tigrett and that the contract could be so reformed.

As the basis for reformation, plaintiffs assert mutual mistake or unilateral mistake by Tigrett Industries and Mr. Tigrett plus inequitable conduct on the part of defendant. All agree that such is necessary for reformation of a contract and that plaintiffs have the burden of showing such by clear, cogent and convincing evidence.

Based on all the evidence, we have reached the conclusion that there was no inequitable conduct on the part of defendant in connection with the negotiation and execution of this contract and, further that there was no mistake on the part of defendant. We have also reached the conclusion that there was not even a mistake on the part of Tigrett Industries and Mr. Tigrett. He (and the corporation through him) well knew the terms of the contract

Memorandum Decision Denying Plaintiffs' Claim for Reformation in Civil Actions Nos. 1581 and 1625

when it was executed and did not believe that it provided what he now says it was his intention that it provide.

In so holding that plaintiffs are not entitled to reformation of this contract, we do not mean to indicate that the contract is so clear on its face that parol evidence would not be admissible for purposes of construction. This question we will decide at the next hearing, and if we do decide that parol evidence is admissible, we will consider such evidence as was admitted on the reformation issue as well as additional such evidence that the parties submit.

Since the amended complaint of Tigrett Industries, Inc. et al. additionally seeks only reformation as to the basis for the payments to it, this amended complaint should be dismissed. The amended complaint of John B. Tigrett will by consent be sustained to the extent that it seeks reformation to provide that the 3% royalty, if due, will be paid to him; it will be dismissed to the extent that it seeks reformation as to the basis of the payments to him.

Counsel will prepare an order for entry.

This 21st day of November, 1966.

BAILEY BROWN
Bailey Brown, Judge
Chief Judge

Order Providing that Three (3%) Percent Royalty, If Due, Will Be Paid to John Burton Tigrett, in Civil Action No. 1625

The above styled action came on for trial before the Court without a jury, on the 16th day of November, 1966, and the 17th day of November, 1966, at Memphis, upon the amended complaint of the Plaintiff, the answer thereto of the Defendant, the appearance of all parties before the Court and the appearance of their respective counsel of record, and testimony having been offered, and memorandums having been filed by both parties, and the Court having filed its memorandum decision, now pursuant to said memorandum decision of the Court, it is hereby

ORDERED, ADJUDGED AND DECREED that the amended complaint of the plaintiff be and the same is hereby sustained to the extent that it seeks reformation to provide that the three (3%) percent royalty, if due, will be paid to the said John Burton Tigrett, plaintiff, and said amended complaint will be dismissed to the extent that it seeks reformation of the contract (Exhibit 1) as to the basis of the payments due the plaintiff.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the subsequent hearing to be held in this matter is to be had upon the original complaint and answer filed in this cause, and there is reserved for this subsequent hearing the question of whether or not parole evidence would be admissible for the purpose of construing the contract. The costs in this proceeding regarding the reformation hearing are to be taxed to the plaintiff.

Order Dismissing Action for Reformation in Civil Action No. 1581

Dated this the 9 day of Dec., 1966.

(Illegible)
United States District Judge

Approved:

Murchison & Murchison
Ralph Kalish
Waldrop, Hall & Tomlin
Attorneys for Plaintiff

Diamond & Holt
Attorneys for Defendant

Order Dismissing Action for Reformation in Civil Action No. 1581

The above styled action came on for trial before the Court without a jury, on the 16th day of November, 1966, and the 17th day of November, 1966, at Memphis, upon the amended complaint of the Plaintiffs, the answer thereto of the Defendant, the appearance of all parties before the Court and the appearance of their respective counsel of record, and testimony having been offered, and memorandum briefs having been filed by both parties, and the Court having filed its memorandum decision, now pursuant to said memorandum decision of the Court, it is hereby

Order Dismissing Action for Reformation in Civil Action No. 1581

ORDERED, ADJUDGED AND DECREED that the amended complaint of the plaintiffs be and the same is hereby dismissed insofar as it seeks reformation of the contract. (Exhibit 1)

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the subsequent hearing to be held in this matter is to be had upon the original complaint and answer filed in this cause, and there is reserved for this subsequent hearing the question of whether or not parole evidence would be admissible by the plaintiffs for the purpose of construing the contract. The costs in this proceeding on the question of reformation shall be taxed to the plaintiffs.

Dated this the 9 day of Dec., 1966.

(Illegible)
United States District Judge

Approved:

MURCHISON & MURCHISON
RALPH KALISH
WALDROP, HALL & TOMLIN
Attorneys for Plaintiffs

DIAMOND & HOLT
Attorneys for Defendant

Memorandum Decision of District Court in Civil Actions Nos. 1581 and 1623

In this memorandum decision we will collectively refer to defendant, Standard Industries, Inc., and its involved operating subsidiary, Jackson Furniture Co., as "defendant."

After these actions were set for trial on the original complaints and the answers thereto, plaintiffs filed amended complaints in which they sought reformation of the contract that is the basis of these actions. Since the reformation of the contract as plaintiffs sought would mean that the issues to be tried would be substantially different from the issues that had been theretofore made, we first held a separate hearing on the reformation question, following which we, on November 21, 1966, entered a Memorandum Decision.

In that decision, we determined that plaintiffs were not entitled, as they sought, to have reformation of the contractual provisions governing the basis for the payment of royalties; but we did determine, with the consent of all parties, that the contract would be reformed to provide that if a 3% royalty was due from defendant, it was payable to plaintiff John Burton Tigreff, rather than to plaintiff Tigreff Industries, Inc. as had been provided in the contract. We further stated in that decision that, in denying reformation of the contract, we did not intend to foreclose a contention by plaintiffs that the contract is ambiguous and to foreclose the introduction of parol evidence as an aid in the construction of the contract.

The subsequent and final hearing of these actions then took place on April 5 and 6, 1967, the record of this hearing was transcribed, and the parties have filed briefs directed to the issues before the Court in this final hearing.

Memorandum Decision at District Court [illegible]

Nos. 1181 and 1255

At the outset of this final hearing it was ruled, with the agreement of all parties, that in the event that the Court should determine that the contract was ambiguous and that parol evidence was therefore admissible, we could and would consider all such relevant evidence admitted at the prior hearing on the reformation issue. We further ruled that if plaintiffs sought to introduce additional parol evidence in support of their contentions as to the proper construction of the contract, we would conditionally admit all such relevant evidence, subject to a later ruling on the question of the ambiguity of the contract and admissibility of such parol evidence. Plaintiffs subsequently did offer some additional parol evidence which was conditionally so admitted.

Plaintiff Mr. Tigrett conceded (R. 24-25) that the contract is not ambiguous as to the basis of his right to receive the 2½ royalty set out in paragraphs 10(c) (d) and (e) of the contract and that under these provisions he would be entitled to receive such royalty only with respect to products covered by the claims of the patents named therein.

On the other hand it is the contention of plaintiff Tigrett Industries, Inc. and plaintiff Bates as assignee of its royalty rights (R. 12-15) that the contract is ambiguous as to the basis of its right to receive the 2½ "over ride" royalty set out in paragraphs 10(c) (d) and (e) and that the Court, upon consideration of the parol evidence, should construe the contract as to require the payment of such royalty on products not within the claims of these named patents. It is not, however, altogether clear from the record and the pre-trial briefs whether these plaintiffs contend that such are entitled to royalty (1) on all products using the [illegible] construction or (2)

on all play pens, or (3) on all products whatsoever, provided, perhaps, that the products are of the same kind as those manufactured by plaintiff Tigrett Industries, Inc. at the time of the sale of the business to defendant. However, since we conclude herein that, under a proper construction of the contract, plaintiff Tigrett Industries, Inc. (and the Banks), like plaintiff Mr. Tigrett, is entitled to royalty only on products within the claims of these patents, it is not necessary for us to determine on which additional products it is entitled to royalty. Moreover, while we think it highly doubtful that the contract is sufficiently ambiguous to allow the admission of parol evidence, since we would so construe the contract whether we consider the contract with or without the parol evidence, we will consider the parol evidence as admitted for this purpose.

At the outset, it should be said that paragraphs 16(c) (d) and (e) seem to be clear that both the 3% and the 2% "over ride" royalties are to be paid only on products covered by the patents named therein. Plaintiffs seem to concede as much, because it is admitted that, as heretofore stated, these provisions are completely clear that plaintiff Mr. Tigrett is entitled to the 3% royalty only on such covered products, and of course these provisions establish the same basis for the 2% "over-ride" royalty as for the 3% royalty. But say plaintiffs Tigrett Industries, Inc. and the Banks, an ambiguity as to the basis of their right to receive the 2% "over ride" royalty is introduced by paragraph 17 of the contract. With respect to this paragraph, it is agreed by all that the word "Buyer" in the fifth line should read "Seller." Paragraph 17 provides that if 5% of the net income before taxes of the new operating company (Jackson Furniture Co.) in a fiscal year exceeds the total of the 2% "over ride" royalties due

Memorandum Decision of District Court in Civil Actions Nos. 1381 and 1622.

2. That the products are not within the claims of the patents.

With respect to two of the patents, that named in [illegible] and that named in [illegible] the [illegible] the underlying agreements (Exs. [illegible] between Mr. Tigrett and Tigrett Industries, Inc. provide that the agreements would be automatically cancelled upon assignment for the benefit of creditors by Tigrett Industries, Inc.; that, after the execution on December 22, 1966 by Tigrett Industries, Inc. of the transfer of the patent rights to the defendant, Tigrett Industries, Inc. on April 26, 1966 made such an assignment to plaintiff Banks; that such assignment to the Banks cancelled the underlying agreement; and that therefore the licenses (sublicenses) to defendant have likewise been cancelled.

Counsel for plaintiffs (fn. 1) [illegible] withdrew their contention that defendant is using the patent named in paragraph [illegible]

Counsel for defendant in its initial post-trial brief, [illegible] withdrew its contention that its play-pen known as "Play N Round" is not utilizing the patent named in paragraph [illegible]

With these stipulations and concessions, we therefore have only two issues:

1. Whether the licenses (assignments) to defendant of the patents named in paragraphs [illegible] and [illegible] and [illegible] respectively have been cancelled by a cancellation of the underlying agreements.

2. Whether the defendant's play pen known as "Hidden [illegible] utilizes the patent named in paragraph [illegible]

With respect to the cancellation issue, defendant in its brief merely restates its position without any real argument and with no authorities. We think that, without citing authorities, it can easily be demonstrated that there is nothing to defendant's cancellation position.

In the first place, in the licenses (assignments) (Exs. 3a and 4a) executed on December 22, 1961 by Everett Industries, Inc. in favor of defendant, both of which were approved by plaintiff, Mr. Everett, all rights were transferred to defendant and defendant assumed all obligations to Mr. Everett; it therefore was contemplated by all concerned that defendant would step into the shoes of Everett Industries, Inc. for all purposes and consequently the latter assignment for the benefit of creditors by Everett Industries, Inc. would not result in a cancellation. Secondly, Mr. Everett wanted as chief officer of Everett Industries, Inc. the assignment for the benefit of creditors to the Bankers Trust Co. and yet he has contended and is now contending that defendant owes him royalty pursuant to the assignment of these patent rights to it. Certainly Mr. Everett, for whose benefit the cancellation clause was placed in the underlying agreements, has waived any right he may have had to rely on a cancellation of the underlying agreements by virtue of the assignment to the Bankers for the benefit of creditors. He is in fact in the position of disavowing any such cancellation. Finally, the position of defendant in this litigation is inconsistent with its contention that the [illegible] it has been estopped [illegible] defendant has the right to attack that of a licensee and has asserted that as a licensee it could not attack the validity of the involved patents.

We therefore conclude that the licenses (assignments) to defendant of these patent rights have not become illegal because of a cancellation of the underlying agreements.

testimony and by the common sense proposition that if the planes of two frames are parallel, they are "in planar parallel relation."

The other and main contention of defendant on the issue of infringement involves the following language in claim 1:

> "... drawstrings engaged to the lower end edge of said netting beneath said base plate, said base plate having a pair of spaced openings, said drawstrings being threaded upwardly through said openings in said base plate and being mutually tiedly engaged above said base plate for providing a grip for convenient manipulation for said netting to elevate said base plate by upward pulling on said grip."

It will be noted the quoted language calls for "a pair of spaced openings" in the base plate through which the drawstrings are threaded upwardly. On the other hand, both of defendant's models have only one hole in the base plate through which the drawstrings are threaded upwardly, and thus, argues defendant, its device does not infringe claim 1.

We are satisfied from the proofs, however, as plaintiff contends, that the doctrine of equivalents is applicable here because the two structures work in substantially the same way and with the same result. [illegible]

Not content, in the presentation of its proof, seemed also to be relying heavily on the doctrine of file wrapper estoppel with respect to the issue now under discussion, but argues this only by a brief reference to the doctrine in its second brief. In any event, we are satisfied that there is nothing in the history of the prosecution of this patent or any particularly the Adamson patent that prevents plaintiffs from contending here that the single opening in defendant's base plate is the equivalent of the two spaced openings called for by Claim 1 of this patent. The two spaced openings as such had nothing to do with the final approval of this patent.

In view of our ruling that the accused structure is the equivalent of the two spaced openings of Claim 1 and that the doctrine of file wrapper estoppel is not applicable here, it is not necessary for us to rule on plaintiffs' contention that the failure of defendant to give notice under [illegible] of its reliance on the Adamson patent and any patents prevents defendant from relying on such prior art patents.

It appears that one of the attorneys for defendant and its father obtained a patent on a play pen shortly before the hearing which patent apparently was issued on the theory that it embodies some improvement over the patent on which plaintiffs rely. However, defendant correctly concedes in its briefs that the subsequent issuance of that patent represents no defense to it if, as we have already determined, its structure is covered by the claims of the first-named patent.

We therefore conclude that plaintiffs are entitled to recover royalties and hereby find in the amount prayed for in paragraph [illegible] and set of the counsel on all

Judgment in Civil Action No. 1581

with the terms and provisions of a contract entered into by Tigrett Industries, Inc. and Standard Industries, Inc. on November 25, 1963.

5. That the Plaintiff, Tigrett Industries, Inc. as aforesaid, is entitled to recover royalties not heretofore paid in the amount established by paragraphs 16 (c) and (e) of said contract, together with interest thereon from the date on which, under the contract, such royalties should have been paid, and, likewise, are entitled to such royalties for the full term of the five (5) year period as defined in paragraphs 16 (c) and (e) of said contract.

6. In the event that the amount of such royalties due upon computation under paragraph 17 should exceed the amount due upon computation under paragraph 16 (c) and (e), plaintiff shall be entitled to be paid such excess.

7. For the reasons stated in the opinion, Plaintiff's request for attorney fees is disallowed.

8. If the parties to this cause are not able to agree as to the dollar amount due the Plaintiff, then, in accordance with this Judgment, the Court will entertain a motion for the appointment of a master to determine said amount.

The costs of this cause are assessed one-third against the Plaintiffs and two-thirds against the Defendant.

On Motion of counsel for Plaintiffs, a lien is hereby expressly declared upon any recovery herein for the purpose of satisfying attorney fees due Waldrop, Hall & Tisdin, Attorneys, and Ralph Kalish, Attorney, counsel for Plaintiffs.

Enter this 11 day of March, 1968.

Ramsey Brown
Chief Judge

Judgment in Civil Action No. 1625

Subsequent to the entry of our Memorandum Decision on December 27, 1967, plaintiff, in accordance with the directions of the Court, prepared a proposed judgment which was submitted to defendant. Defendant, however, did not approve as to form such proposed judgment. Thereafter, the Court directed defendant forthwith to prepare and submit an alternative proposed judgment, which the defendant failed to do. The Court thereupon, with slight alteration, is now duly entering the judgment as prepared and submitted by plaintiff.

IT IS ORDERED AND ADJUDGED BY THE COURT AS FOLLOWS:

1. That the play pen produced and sold by Jackson Furniture Company, identified as "Play A Round," is covered by the claims of U. S. Letters Patent No. 2,790,978.

2. That the play pen produced and sold by Jackson Furniture Company, identified as the "Holden Convertible," is covered by the claims of U. S. Letters Patent No. 3,162,867.

3. Plaintiff, John Burton Tigrett, is entitled to a three (3) percent royalty upon all play pens produced and sold by Jackson Furniture Company covered by said Letters Patent No. 2,790,978.

4. Plaintiff, John Burton Tigrett, is entitled to a three (3) percent royalty on each of the play pens produced and sold by Jackson Furniture Company covered by U. S. Letters Patent No. 3,162,867.

5. Said Plaintiff is entitled to and those [illegible] percent royalties for the full period of said patents as prescribed by paragraphs [illegible] and [illegible] of a contract between Tigrett

Order Extending Time to Docket Record on Appeal in Civil Actions Nos. 1581 and 1625

Order Extending Time to Docket Record on Appeal in Civil Actions Nos. 1581 and 1625

It appears to the Court that the first hearing in this case took place on November 16 and 17, 1966, which had to do only with the claim of plaintiffs for reformation of the contract which was the basis of these actions, and that a Memorandum Decision was entered by the Court on November 21, 1966 denying the claim for reformation. It further appears that the second hearing was held on April 5 and 6, 1967, at which plaintiffs contended, *inter alia*, that in any event said contract was ambiguous and that parol evidence should be received in construing the contract; at this hearing, it was agreed that all evidence introduced at the reformation hearing would be considered on the issue as to the ambiguity and the construction of the contract. At the conclusion of this hearing, considering all of the evidence adduced at the prior hearing and additional evidence introduced at this hearing, the Court concluded that the contract, if ambiguous, should be construed as defendant contended, and therefore in rendering its Memorandum Decision on December 27, 1967, the Court construed the contract as defendant contended. Accordingly, since plaintiffs are not appealing this determination by the Court, the transcript of the testimony of the first hearing is not necessary for a decision of this appeal, and we construe the letter of counsel for defendants to the Court Reporter as not ordering that part of the record.

Since the transcript of the second hearing was prepared by the Court Reporter for the benefit of counsel and the Court following that hearing, it is immediately available and, since request of counsel for defendant has been received, it has been filed with our Clerk; therefore, our Clerk can forthwith send to the Clerk of the Court of Appeals the entire relevant record in this case and therefore an extension of time beyond May 15, 1968, on which

Order Extending Time to Docket Record on Appeal in Civil Actions Nos. 1581 and 1625

date the time would expire, to and including May 20, 1968, would suffice for all purposes.

It further appears that under Rule 73(g) the Court on its own motion may extend time and, considering the foregoing circumstances, the Court is of the opinion that the time should be extended to and including May 20, 1968. It is so ORDERED.

It is further ordered that said letter of counsel for defendant to the Court Reporter dated May 10, 1968 and said letter of counsel for plaintiffs dated May 13, 1968 to this Court be filed in these causes.

ENTER this 14th day of May, 1968.

BAILEY BROWN
Chief Judge

Docket Entries—Case No. 18,700

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Filings—Proceedings

1968

May 20 *Certified record* (1 vol. pleadings, 3 vols. transcript and 2 vols. depositions), filed; and cause docketed

May 23 Appearance of counsel for Appellees

May 23 Motion: Appellant's brief and appendix to 10/7/68; limiting the printing to certain documents in the appendix; limiting the issues to be determined; consolidating appeals 18,700-1-2-3; requiring attorneys for Appellees to appoint a single "leading counsel", with affidavit and proof of service

May 24 Appearance of counsel for Appellees

May 27 Appearance of counsel for Appellant

May 27 Appearance of counsel for Appellees

May 27 Motion of Appellees to strike motion filed May 23, 1968 by Appellants, with affidavit and proof of service

June 7 Order extending time for filing Appellant's brief to 9/1/68; denying Appellant's motion to limit material to be included in appendix; denying motion of Appellant to limit issues to be determined on the appeal; consolidating appeals 18,700-1-2-3; and denying motion to appoint a single leading counsel (Combs, J.) Q-228

Aug. 9 Motion: Brief for Appellant and appendix to 11/30/68 (Allowed to 10/31/68—JW

Aug. 13 Motion of Appellees to strike motion of Appellant for extension of time

Docket Entries—Case No. 18,700

Aug. 28 Replying affidavit in support of Appellant's motion for extension
Aug. 30 Appellant's designation of issues and contents of appendix
Sep. 9 Appellees' designation as to contents of appendix
Oct. 28 Stipulation: Appellant's brief and appendix to 11/29/68 (Approved, but no further extensions will be allowed—JWP)
Nov. 21 Ten copies of Appendix
Nov. 27 Twenty-five copies of Appellant's Brief
Nov. 27 Proof of service of Appellant's brief
Dec. 30 Twenty-five copies of Appellee's Brief
Dec. 30 Proof of service of Appellee's brief

1969

Jan. 13 Twenty-five copies of Appellant's Reply Brief
Jan. 13 Proof of service of Appellant's reply brief
Apr. 16 Cause argued and submitted (Before: Edwards, Celebrezze and Gordon, JJ. Q-744
May 27 Judgment of the District Court affirmed R-53
May 27 Opinion Per Curiam (Edwards, J.) 3 pp.
June 17 Mandate issued (No costs taxed)
Opinion with mandate
June 19 Motion of Appellees for leave to file cost bill
June 30 Order denying motion of Appellees for leave to file a cost bill out of time (Edwards, J.) R-129
July 9 Certified record for certiorari application, including original record on appeal, mailed to Clerk of Supreme Court
Aug. 11 Notice of filing petition for certiorari 8/8/69 (Sup. Ct. No. 445)
Nov. 3 Certified copy of order of Supreme Court granting certiorari 10/27/69

Docket Entries—Case No. 18,701

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Filings—Proceedings

1968

May 20—*Certified record* (1 vol. pleadings, 3 vols. transcript and 2 vols. depositions), filed; and cause docketed

May 23 Appearance of counsel for Appellees

May 23 Motion: Appellant's brief and appendix to 10/7/68; limiting the printing in appendix; limiting the issues to be determined; consolidating appeals 18,700-1-2-3; requiring attorneys for Appellees to appoint a single "leading counsel", with affidavit and proof of service

May 24 Appearance of counsel for Appellees

May 27 Appearance of counsel for Appellant

May 27 Appearance of counsel for Appellees

May 27 Motion of Appellees to strike motion filed May 23, 1968 by Appellants, with affidavit and proof of service

June 7 Order extending time for filing Appellant's brief to 9/1/68; denying Appellant's motion to limit material to be included in appendix; denying motion of Appellant to limit issues to be determined on the appeal; consolidating appeals 18,700-1-2-3; and denying motion to appoint a single leading counsel (Combs, J.) Q-228

Aug. 9 Motion: Brief for Appellant and appendix to 11/30/68 (Allowed to 10/31/68)—

Aug. 13 Motion of Appellees to strike motion of Appellant for extension of time

Aug. 28 Replying affidavit in support of Appellant's motion for extension

Docket Entries—Case No. 18701

Aug. 30 Appellant's designation of issues and contents of appendix
Sep. 9 Appellees' designation as to contents of appendix
Oct. 28 Stipulation: Appellant's brief and appendix to 11/29/68 (Approved, but no further extensions will be allowed—JWP)
Nov. 21 Ten copies of Appendix
Nov. 27 Twenty-five copies of Appellant's Brief
Nov. 27 Proof of service of Appellant's brief
Dec. 30 Twenty-five copies of Appellee's Brief
Dec. 30 Proof of service of Appellee's brief

1969

Jan. 13 Twenty-five copies of Appellant's Reply Brief
Jan. 13 Proof of service of Appellant's reply brief
Apr. 16 Cause argued and submitted (Before: Edwards, Celebrezze and Gordon, JJ.) Q-744
May 27 Judgment of the District Court affirmed R-53
May 27 Opinion Per Curiam (Edwards, J.) 3 pp.
June 17 Mandate issued (No costs taxed)
Opinion with mandate
June 19 Motion of Appellees for leave to file cost bill
June 30 Order denying motion of Appellees for leave to file a cost bill out of time (Edwards, J.) R-129
July 9 Certified record for certiorari application, including original record on appeal, mailed to Clerk of Supreme Court
Aug. 11 Notice of filing petition for certiorari 8/8/69 (Sup. Ct. No. 445)
Nov. 3 Certified copy of order of Supreme Court granting certiorari 10/27/69

Docket Entries—Case No. 18,702

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Filings—Proceedings

1968

May 20 *Certified record* (1 vol. pleadings, 1 vol. deposition, and 2 vols. transcript), filed; and cause docketed

May 23 Appearance of counsel for Appellees

May 23 Motion; Appellant's brief and appendix to 10 7 68; limiting printing in appendix; limiting the issues to be determined; consolidating appeals 18,700-1-2-3; requiring attorneys for Appellees to appoint a single "leading counsel", with affidavit and proof of service

May 24 Appearance of counsel for Appellees

May 27 Appearance of counsel for Appellant

May 27 Appearance of counsel for Appellees

May 27 Motion of Appellees to strike Appellant's motion of 5 23 68, with affidavit and proof of service

June 7 Order extending time for filing Appellant's brief to 9 1 68; denying Appellant's motion to limit material to be included in appendix; denying motion of Appellant to limit issues to be determined on appeal; consolidating appeals 18,700-1-2-3; and denying motion to appoint a single leading counsel (Combs, J.) Q-228

Aug. 9 Motion: Brief for Appellant and appendix to 11 30 68 (To 10 31 68—JWP)

Aug. 13 Motion of Appellees to strike motion of Appellant for extension of time

Aug. 28 Replying affidavit in support of Appellant's motion for extension

Aug. 30 Appellant's designation of issues and contents of appendix

Docket Entries—Case No. 18,702

Sep. 9 Appellee's designation as to contents of appendix
Oct. 28 Stipulation: Appellant's brief and appendix to 11 29 68 (Approved, but no further extensions will be allowed—JWP)
Nov. 21 Ten copies of Appendix
Nov. 27 Twenty-five copies of Appellant's Brief
Nov. 27 Proof of service of Appellant's brief
Dec. 30 Twenty-five copies of Appellee's Brief
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Aug. 11 Notice of filing petition for certiorari 8 8 69 (Sup. Ct. No. 445)
Nov. 3 Certified copy of order of Supreme Court granting certiorari 10/27/69

Docket Entries—Case No. 18,703

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

Filings—Proceedings

1968

May 20 *Certified record* (1 vol. pleading, 1 vol. depositions and 2 vols. transcript), filed; and cause docketed

May 23 Appearance of counsel for Appellees

May 23 Motion: Appellant's brief and appendix to 10 7 68; limiting printing in appendix; limiting the issues to be determined; consolidating appeals 18,700 1-2-3; requiring attorneys for Appellees to appoint a single "Leading Counsel", with affidavit and proof of service

May 24 Appearance of counsel for Appellees

May 27 Appearance of counsel for Appellant

May 27 Appearance of counsel for Appellees

May 27 Motion of Appellees to strike motion of Appellant filed 5 23 68, with affidavit and proof of service

June 7 Order extending time for filing Appellant's brief to 9 1 68; denying Appellant's motion to limit material to be included in appendix; denying motion of Appellant to limit issues to be determined on appeal; consolidating appeals 18,700-1-2-3; and denying motion to appoint a single leading counsel (Combs, J.) Q-228

Aug. 9 Motion: Brief for Appellant and appendix to 11 30 68 (Allowed to 10 31 68—

Aug. 13 Motion of Appellees to strike motion of Appellant for extension of time

Aug. 28 Replying affidavit in support of Appellant's motion for extension

Aug. 30 Appellant's designation of issues and contents of appendix

Docket Entries—Case No. 18,703

Sep. 9 Appellee's designation as to contents of appendix
Oct. 28 Stipulation: Appellant's brief and appendix to 11 29 68 (Approved, but no further extensions will be allowed—JWP)
Nov. 21 Ten copies of Appendix
Nov. 27 Twenty-five copies of Appellant's Brief
Nov. 27 Proof of service of Appellant's brief
Dec. 30 Twenty-five copies of Appellee's Brief
Dec. 30 Proof of service of Appellee's brief

1969

Jan. 13 Twenty-five copies of Appellant's Reply Brief
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Apr. 16 Cause argued and submitted (Before: Edwards, Celebrezze and Gordon, JJ.) Q-744
May 27 Judgment of the District Court affirmed R-53
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July 9 Certified record of certiorari application, including original record on appeal, mailed to Clerk of Supreme Court
Aug. 11 Notice of filing petition for certiorari on 8 8 69 (Sup. Ct. No. 445)
Nov. 3 Certified copy of order of Supreme Court denying certiorari 10 27 69

Decision of the United States Circuit Court of Appeals for the Sixth Circuit

Nos. 18700-701

Nos. 18702-703

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

TIGRETT INDUSTRIES, INC., etc.,

Plaintiffs-Appellees,

v.

STANDARD INDUSTRIES, INC.,

Defendant-Appellant.

JOHN BURTON TIGRETT,

Plaintiff-Appellee,

v.

STANDARD INDUSTRIES, INC.,

Defendant-Appellant.

APPEAL from the United States District Court for the Western District of Tennessee.

Decided May 27, 1969.

Before: EDWARDS and CELEBREZZE, Circuit Judges, and GORDON,* District Judge.

* Honorable James F. Gordon, United States District Judge for the Western District of Kentucky, sitting by designation.

Decision of the United States Circuit Court of Appeals

PER CURIAM. Appellant, Standard Industries, Inc., appeals from judgments entered in the United States District Court for the Western District of Tennessee in favor of Plaintiffs, Tigrett Industries, Inc., and John Burton Tigrett for license fees under patents.

In this case John Burton Tigrett contracted with a company which he controlled, Tigrett Industries, Inc., to allow it to use his patents. The contract provided for "automatic cancellation" in the event of bankruptcy of Tigrett Industries, or in the event of assignment for the benefit of creditors by that company. Later Tigrett Industries, with Tigrett personally participating, sold its assets, including the patent rights here involved, to Standard Industries, and Standard Industries by that contract undertook to assume all of Tigrett Industries' former responsibilities.

Still later Tigrett Industries made an assignment for benefit of creditors, and Standard, refusing to pay the patent license fees, claimed advantage of the automatic cancellation clause in the original contract between Tigrett and Tigrett Industries.

The two issues decided by the District Judge and presented by this appeal were stated as follows in the District Judge's Memorandum Decision:

> "1. Whether the licenses (assignments) to defendant of the patents named in paragraphs 16(c) and (e), #2,790,978 and #3,162,865, respectively, have been cancelled by a cancellation of the underlying agreements;
>
> "2. Whether the defendant's play pen known as 'Golden Convertible' utilizes the patent named in paragraph 16(e), #3,162,865 (Ex. 10)."

As to the first issue the District Judge held that Standard Industries stepped into Tigrett Industries' shoes, and that the cancellation clause ran only to the benefit of John Burton Tigrett, individually. We agree.

Nor did we find any clear error in the District Judge's factual holding that a certain "Golden Convertible" baby bed which Standard Industries were manufacturing was being manufactured under the patent license under the doctrine of equivalents. The fact that the play pen floor was adjusted up or down by strings running through the floor through one hole rather than two holes did not appear to him to represent a substantial difference. Neither does it to us. *Graver Mfg. Co. v. Linde Co.*, 339 U. S. 605 (1950).

We have reviewed the District Judge's Memorandum Decision and we approve the findings of fact and conclusions of law contained therein.

Affirmed.

Filed May 27, 1969

CARL W. REUSS, Clerk

Docket Entries—Supreme Court of the United States

August 8th, 1969 Petition for Writ of Certiorari filed

September 6th, 1969 Respondent's Brief in Opposition filed

October 27th, 1969 Petition for Writ of Certiorari granted and case placed on Summary Calendar

November 4th, 1969 Additional Docketing Fee of $50.00 paid by Petitioner.

Contract for Purchase of Assets

THIS AGREEMENT made and entered into by and between Tigrett Industries, Inc., a Delaware corporation, qualified to do business in Tennessee, hereinafter sometimes referred to as Seller, and Standard Industries, Inc., a New York corporation, hereinafter sometimes referred to as Buyer, on this 25th day of November, 1964,

WITNESSETH:

WHEREAS, Seller is a corporation engaged in the manufacture and sale of infant products, toys and sporting goods at their plant in Jackson, Tennessee; and

WHEREAS, Seller and Buyer have reached an understanding with respect to the sale by Seller and the purchase by Buyer of substantially all of the assets of the infant products division of Seller, excluding cash items and accounts receivable;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises and undertakings as are hereinafter contained, the parties hereto do covenant and agree as follows:

1. SALE OF ASSETS. Seller does hereby agree to sell, assign, transfer, and deliver unto Buyer for the consideration as hereinafter provided, all of the machinery, supplies, tools, equipment, dies, molds, furniture, parts and fixtures, owned and used, by its infant products division in the normal operation of its business, as the same are included and designated on Schedule A, attached hereto and made a part hereof, all raw materials, work in process and finished goods inventory, all trade names, including, but not limited to the names Golden Convertible, Play-A-Round, Thru-The-Door and Tag-A-Long, goodwill, patents, patent licenses,

trademarks, designs, unfilled orders, contracts, and other items of similar nature, and all other goods chattels, and things of all kinds and description owned by this division, excepting the name Tigrett, whether located at their plant or office or wherever the same may be, provided it is specifically understood and agreed that this sale does not include any cash on hand or in banks, accounts receivable, notes receivable, insurance or security deposits. Subject to the terms and conditions of this Agreement and in reliance upon the below mentioned representation and warranties of Seller, Buyer does hereby agree to purchase these said assets and in full consideration therefor shall pay for the account of the Seller in cash a sum of money to be determined as hereinafter provided and to be disbursed as hereinafter provided in paragraph 1 (c) below.

(a) The sum of One Hundred Five Thousand Dollars ($105,000.00) in full payment for all of the items of machinery, parts, tools, equipment, dies, molds, furniture and fixtures, supplies, designs, trade names and trademarks, unfilled orders, contracts.

(b) A sum of money equal to the cost of all items of inventory, including raw materials, work in process, and finished goods as same are on hand at a mutually agreeable date between December 2 and 5. Said inventory shall be jointly taken by a representative of the Buyer and a representative of the Seller who shall agree as to the count and the pricing of the inventory. In determining the cost for raw materials actual invoice prices or market price, if same is lower than actual invoice price shall be used. Direct labor, supervision and manufacturing costs shall be determined for work in process and finished goods inventor-

ies based upon current data. The term "manufacturing costs" as used herein conclusively construed to be a sum equal to fifteen (15) per cent of the total of:

(1) the lower of actual invoice cost or market for raw materials, plus

(2) the direct labor cost, as such costs relate to such work in process and finished goods.

Items of inventory consisting of products which have not sold in the regular course of business for the past three months and any raw material parts or supplies for such items shall be deemed to be obsolete items and shall not be included in calculating the inventory value.

In the event of any disagreement in connection with the valuation of the inventory, same shall be submitted to W. Stuart McCloy, Esq., as sole arbiter and his decision shall be final and binding upon the parties hereto.

(c) The foregoing cash payment for Seller's account shall be made at the closing by delivery of check, subject to collection, to McCloy, Welford & Clark, First National Bank Building, Memphis, Tennessee, to be held in compliance with the Bulk Transfer Provisions of Tennessee Code Annotated. Upon the expiration of the thirty day statutory period for filing creditors claims, as proscribed by T. C. A., Section 47-6-106, said escrow agent shall thereupon disburse all escrow funds pro rata to Seller's creditors in strict compliance with T. C. A. Section 47-6-106. For the purposes hereof the aforementioned provisions of Tennessee Code Annotated are incorporated herein by reference.

2. ASSUMPTION OF LIABILITIES. The parties hereto do specifically understand and agree that Buyer is assuming no obligation or liabilities of Seller whatsoever.

3. LEASE OF PROPERTY. Seller does hereby agree to cause C. B. Whitlow, Trustee, to enter into a lease with Buyer or its designee (in which event Buyer will guarantee performance of the lease) for a period of five years of that property located in the Second Ward of the City of Jackson, Madison County, Tennessee, and more particularly described in written lease contract to Seller from C. B. Whitlow, Trustee, dated August 2, 1962, but effective as of May 1, 1962, at a rental of Twenty-five Thousand Two Hundred Dollars ($25,200.00) per year, payable in monthly installments, and on the same rental terms and conditions as specified in said existing lease contract, copy of which is hereto attached, and the term of this new lease shall start from the date of the closing of this sale. The lease shall be modified to provide that the landlord will, at tenant's request, cause portions of the premises to be sprinklered, in which event tenant will pay to the landlord monthly tenant's savings in fire insurance up to an amount, which, when added to landlord's savings in cost of fire insurance, would cover the cost of such installation. The lease shall also provide for two and one-half year consecutive renewal option upon the same terms and conditions.

4. PRIOR GUARANTEES. It is specifically understood and agreed that Buyer does not assume any obligation or liability whatsoever for any waranties or guarantees of Seller's products, or on sales of any items by Seller to anyone.

5. COMPLIANCE WITH BULK SALES LAW. The parties hereto do specifically agree to promptly effect strict com-

pliance with the provisions of the Tennessee Code Annotated as the same relate to transfers in bulk, and Seller does hereby agree that it will transfer and convey, or cause to be transferred and conveyed, to Buyer or its designee good and valid title to all of the properties being purchased and sold hereunder, free and clear of any lien, charge, claim or encumbrance of any nature whatsoever.

6. Representations and Warranties of Seller. Seller does hereby represent and warrant as follows:

(a) That it is duly organized and presently existing in good standing under the laws of Delaware, the state in which it is incorporated, and that it is duly qualified to do business in the State of Tennessee, and all of its operations are duly authorized by its Certificate of Incorporation.

(b) The execution and delivery of this agreement to Buyer and the sale contemplated hereby have been duly authorized by Seller's Board of Directors and by at least two-thirds of the holders of the issued and outstanding stock of Seller, and Seller will deliver to Buyer certified copies of the resolutions authorizing such sale passed by its said Board of Directors, and Stockholders, such copies having been certified by the Secretary of the Seller.

(c) That it will furnish good title to all the items being sold to Buyer, that it has the right to sell the same; that it will warrant the title to all the same to be free and clear of all encumbrances and liens of every kind; and that it will defend the title thereto against all claims whatsoever.

7. Opinion of Seller's Counsel. At the closing Hewitt Tomlin, Esq. attorney for the Seller, shall furnish his opinion that all of the terms and conditions of this agree-

ment are in full compliance with all applicable statutes and that all appropriate action has been taken by the stockholders and board of directors of the Seller in order to effectuate this agreement, and that the property to be sold and conveyed hereunder is free and clear of any and all liens and encumbrances of whatsoever kind or nature, and that the Bill of Sale will transfer good and marketable title to the property.

8. Representations and Warranties of Buyer. Buyer does hereby represent and warrant to Seller that the purchase as provided herein is within the authorization of its Certificate of Incorporation; and that the purchase provided herein has been duly authorized by its board of directors.

9. Assignment. It is understood and agreed that Buyer may assign this agreement to a new corporation to be formed for the purpose of taking title hereunder upon condition that such assignment shall not release the Buyer from its obligations hereunder.

10. Expenses of Closing. Each of the parties hereto shall bear its own expenses incurred in the negotiation and consummation of this agreement and the cost of taking the inventory contemplated.

11. Execution of Additional Documents. Seller does hereby specifically agree to execute or cause to be executed all such bills of sale, assignments, leases, patent and trade name and trade mark assignments and licenses, or other instruments, documents, or papers as may be deemed reasonably necessary or advisable to carry out each and every provision of this agreement.

Contract for Purchase of Assets

12. Books and Records of Seller. Seller agrees to make its books and records available to Buyer at reasonable times and upon reasonable notice, and does further agree to turn over to Buyer all customer lists, cost data and other records of said infant products division and to keep all other such books and records available to Buyer at Jackson, Tennessee. It is recognized that Buyer is purchasing an existing business, and will have occasion to refer to customers' accounts and correspondence files. Accordingly, Seller agrees to make all of said records available to Buyer in such form as will serve the convenience of Buyer and still protect the interest of Seller in such records.

13. Closing Date. The closing of the purchase and sale provided herein shall take place at Jackson, Tennessee, between the dates of Tuesday, December 8 and Saturday, December 12, 1964, provided that all notice requirements of the Bulk Transfer Statutes have been met and the taking of inventory and pricing completed and agreed upon.

14. Warranty. Seller represents and warrants that Schedule A, referred to in paragraph 1, includes all such items owned and used by the Seller in connection with said infant products division or the sale of its products. Seller agrees to transfer to Buyer title to all the items incorporated in Schedule A referred to in paragraph 1, free and clear of all encumbrances, liens and claims of any and every kind.

15. Patents. Seller agrees to obtain prior to the closing herein all necessary consents, assignments and other instruments of transfer in and to the patent licenses referred to in the next ensuing paragraph and all copyrights

and trade names owned or used by the Seller in form and substance satisfactory to the Buyer's attorney.

16. PATENTS. The following arrangement shall apply with respect to the Infant Division Patent Licenses:

(a) With respect to Patent No. 2,563,915, issued August 14, 1951, expiring August 14, 1968, assigned to Sears-Roebuck and Company, covering Round Net Playpen, Buyer is to receive a nonexclusive United States License for the remainder of the patent, and shall pay the royalty specified.

(b) With respect to patent applied for by E. E. Foster on spring swing mechanism, Buyer is to receive an exclusive United States License for the period of the patent from the Seller, who represents and warrants that it is the exclusive United States licensee, and Buyer is to pay the royalty specified in the attached memorandum marked Schedule B, attached hereto and made a part hereof.

(c) On Patent No, 2,790,978, issued May 7, 1957, expiring May 7, 1974, assigned to C. B. Whitlow, covering U-bolt construction, Buyer is to receive an exclusive United States license for the full period of the patent on a 3% of covered product sale price basis, plus an additional 2% of such sale price over-ride to be paid to the Seller for a period of five years from the date of the closing of this sale, and no longer.

(d) On Patent No. 2,990,190, issued June 27, 1961, expiring June 27, 1978, assigned to L. A. Erickson, covering Tag-A-Long, Buyer is to receive an exclusive United States license for the full period of the patent, on a basis of 3% of covered product sales price on the first 25,000 units sold in each calendar year, 2½% on the next such

25,000 units sold in each calendar year, and 2% on all over 50,000 such units sold in each calendar year, plus an additional 2% of such sale price override to be paid to the Seller for a period of five years from the date of the closing of this sale, and no longer.

(e) On Patent Application No. 124,668 dated July 16, 1961, issued July 25, 1964, to C. B. Whitlow, covering a mechanism for raising and lowering bed, Buyer is to receive an exclusive United States license for the full period of the patent on a basis of 3% of covered product sale price, plus an additional 2% of such sale price override to be paid to the Seller for a period of five years from the date of the closing of this sale, and no longer.

17. CONDITIONAL PAYMENT. In the event that in any fiscal year during the five year period, beginning with the closing date of this sale, an amount calculated as five per cent of the net income before taxes, of the new operating company shall exceed the total amount paid in said fiscal year to the Seller as excess royalties, on a basis of 2% of sales as more specifically set out in paragraph 16, sections (c), (d) and (e) of pararaph 16 above, then, in such event for such fiscal year the Buyer shall pay to Seller the amount of such excess.

18. BINDING EFFECT. The terms and conditions of this agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors and assigns.

[Copy missing]

this agreement in several counterparts, each of which shall hereafter be considered as an original, by their said officers or persons duly authorized to do so, on this 25th day of November, 1964.

This agreement is subject and conditional to the fact that in the opinion of the Buyer no diminution of good will and nothing contrary to continued sound operation shall have occurred from the date of Buyer's offer until the closing.

TIGRETT INDUSTRIES, INC.
by JOHN BURTON TIGRETT
Chairman of the Board
JOHN BURTON TIGRETT

Attest:

HEWITT TOMLIN JR.
Secretary

STANDARD INDUSTRIES, INC.
by (illegible)
Vice President

Attest:

(illegible)
Secretary

Letter of Transmittal

(Letterhead of)

WALDROP, HALL & TOMLIN
106 S. Liberty
Jackson, Tennessee

April 26, 1965

CERTIFIED—Return Receipt Requested

Mr. Karl J. Schumer, Secretary
Standard Industries, Inc.
120 Wall Street
New York, N. Y.

Mr. S. Leo Branca, Vice-president
Jackson Furniture Corporation
120 Wall Street
New York, N. Y.

Gentlemen:

Enclosed you will find a copy of Notice of Assignment, which notice is being sent you by The First National Bank of Jackson and the National Bank of Commerce, of Jackson, as Trustees, the said banks being assignees under an Agreement of Assignment dated April 26, 1965, executed by Tigrett Industries, Inc., as assignor.

The purpose of the notice is to call your attention to the assignment by Tigrett of certain rights acquired by it and a contract of purchase made with Standard Industries on November 25, 1964, which rights are more particularly spelled out and set forth in Sections C, D and E of Paragraph 16 and Paragraph 17 of said agreement and which rights are further spelled out in certain Assign-

ments of Patent Rights executed by Tigrett and Jackson Furniture Corporation on December 21, 1964.

Very truly yours,

WALDROP, HALL & TOMLIN
By

HPT:mkl

Enc.

cc: Mr. Joe Lawless
Jackson Furniture Corporation
600 Mobile Avenue
Jackson, Tennessee

bc: Mr. Simpson Russell, Chairman
National Bank of Commerce
Jackson, Tennessee

bc: Mr. W. E. Terry, Vice-chairman
The First National Bank
Jackson, Tennessee

Notice of Assignment

TO: JACKSON FURNITURE CORPORATION,
600 Mobile Ave.
Jackson, Tennessee

STANDARD INDUSTRIES, INC.
20 Wall Street
New York, New York

WHEREAS, by an Agreement dated April 26, 1965, Tigrett Industries, Inc. did assign to the First National Bank of Jackson and The National Bank of Commerce of Jackson, as Trustees for the benefit of certain creditors of Tigrett Industries, Inc. all funds and monies that are to be paid to it by Jackson Furniture Corporation, which obligation is also an obligation of Standard Industries, Inc., in accordance with the terms and provisions of a contract between Tigrett Industries, Inc. and Standard Industries Inc., dated November 24, 1964, said funds being due and payable in accordance with Section 16, subsections (c), (d) and (e) and also Section 17 of said contract, and also being due and payable to Tigrett Industries, Inc. in accordance with certain Assignments of Patent Rights, executed on December 22, 1964, by and between Tigrett Industries, Inc. and Jackson Furniture Corp., covering Patents Nos. 2,790,978, 2,990,190 and 3,162,865, the latter appearing in the Contract of Purchase as Patent Appl. No. 124,668;

NOW, THEREFORE, this is to serve as notice and notify the said Jackson Furniture Corporation and Standard Industries, Inc. that all of said monies that may be due as aforesaid have been assigned to the First National Bank of Jackson and The National Bank of Commerce as Trus-

tees, and until further notice are to be remitted when due to The First National Bank, Jackson, Tennessee.

This April 26, 1965.

THE FIRST NATIONAL BANK OF JACKSON
By W. E. TERRY
Vice Chairman and Trustee

THE NATIONAL BANK OF COMMERCE
By SIMPSON RUSSELL
Chairman

Assignment for the Benefit of Creditors Between Tigrett Industries, Inc. and Its Creditors

ASSIGNMENT

THIS AGREEMENT, made and entered into on this the 26th day of April, 1965, by and between Tigrett Industries, Inc., a Delaware Corporation, qualified to do business in the State of Tennessee, and with its principal place of business at Jackson, Tennessee, hereinafter designated as First Party, and the First National Bank of Jackson, Tennessee, and the National Bank of Commerce, of Jackson, Tennessee, hereinafter designated as Trustees, WITNESSETH:

WHEREAS, First Party has for several years been engaged in the manufacture and sale of toys and sporting goods and infant furniture, and in the course of its operations had become indebted to a number of creditors, and

at a time found itself in a position where it was unable to pay all of said obligations in cash in full; and,

WHEREAS, negotiations have been had with substantially all of its creditors as to the payment of its obligations, with substantially all of the creditors of the First Party, having indicated to the First Party their willingness to accept as payment in full all payments to be made in accordance with the provisions of a Composition Agreement, signed by said creditors, a copy of which is attached hereto as Exhibit 1; and,

WHEREAS, the First Party did by proper authorization by its Board of Directors and Stockholders, sell, in accordance with all State and local statutes, its Toy and Sporting Goods Division to Tennessee Industries, Inc., a Tennessee corporation, and did also sell its Infant Furniture Division to Jackson Furniture Corporation, also a Tennessee corporation, and in the sale of said divisions did acquire certain assets which by the terms of the agreement with creditors were contemplated to be turned over and delivered to the Trustees, to be used by them in the payment to the creditors of the First Party, then and there existing at the time of the sale of said divisions; and,

WHEREAS, there are certain known creditors of the First Party, to which certain specific amounts are now due and owing by the First Party, which creditors and the amounts due and owing to them are as set forth on the Schedule attached hereto, and marked Exhibit 2; and,

WHEREAS, the First Party has agreed to make this assignment and enter into the covenants hereinafter con-

tained, and all of said creditors executing the Composition Agreement have agreed with the First Party, and mutually each with the others, to accept the payment outlined therein in satisfaction of their debts.

NOW, THEREFORE, in pursuance of said agreement and in consideration of the premises, the First Party hereby conveys and assigns unto the Trustees, their successors and assigns, all of the following assets belonging to the First Party as of the date of this assignment, to-wit:

1. Accounts receivable. All of the accounts receivable presently shown on the books of the First Party as being due and owing to the First Party. In this connection, First Party agrees to furnish Trustees a list of said accounts as taken from its books and records, and as needed from time to time by the Trustees to furnish them with any substantiating records or other evidence of these accounts being due and owing First Party.

2. All cash on hand by the First Party, as is currently on deposit in accounts belonging to it, in The First National Bank, of Jackson.

3. The Two (2%) per cent over-ride royalty to be paid to First Party by Jackson Furniture Corporation, in connection with its purchase from First Party, of the Toy and Infant Furniture Division, on the selling price of certain items manufactured and sold by it and using certain patents, which were assigned and are sold to Jackson Furniture Corporation by First Party in connection with the sale of said division to it.

   The assignment of these Two (2%) per cent over-ride royalties applies to all royalties paid in ac-

cordance with the assignment of these patents and patent rights to the Jackson Furniture Corporation, which the said Jackson Furniture Corporation shall be obligated to pay unto First Party, from and after the 21st day of December, 1964, through and including the 31st day of December, 1967.

The Two (2%) per cent royalty over-ride to be paid by Jackson Furniture Corporation to First Party, and which is here being assigned to Trustees constitutes Two (2%) per cent of the net selling price of all units sold by Jackson Furniture Corporation, which shall embody the use of the inventions covered by the particular patents, hereinafter described. The term "net selling price" is defined in each of the Assignment instruments, executed by First Party to Jackson Furniture Corporation, which instruments are dated December 22, 1964, and are filed as Exhibits 3, 4 and 5 to this assignment.

The first patent, the assignment of which is affected by this royalty over-ride, is Patent No. 2,790,978, covering the U-bolt mechanism, which was assigned by the First Party, as owner, to Jackson Furniture Corporation, as aforesaid.

The second patent covered by this provision is Patent No. 2,990,190, covering a Tag-along invention, wherein the interest of the First Party and a License Agreement covering said patent was assigned by First Party to Jackson Furniture Corporation, as aforesaid.

The third patent affected by the Two (2%) per cent over-ride royalty is Patent No. 3,162,865, covering a mechanism for the raising and lowering of

a bed, which was sold by First Party to Jackson Furniture Corporation, as aforesaid.

The time and method of making of said payments of the over-ride royalties by the Jackson Furniture Corporation are as described in the specific instruments under which the First Party acquired its rights in and to said patents, said over-ride royalties being payable in the same manner and method as the basic royalties provided therein, said instruments under which First Party acquired its rights thereto being filed herewith as Exhibits 6, 7 and 8.

4. All of the additional royalties to be paid to First Party by Tennessee Industries, Inc., in respect to certain Patent Licenses sold and/or assigned to Tennessee Industries, Inc., in connection with the sale to it of the Toy and Sporting Goods Division of First Party, all of said patents and licenses, the amount of said royalties, the time and terms of payment as set forth more specifically under Paragraph XII of the document entitled "Contract of Purchase of Assets", entered into between First Party and Tennessee Industries, Inc., which is filed herewith as Exhibit 9 to this assignment.

This conveyance is made upon the following express conditions:

1. Upon trust, in the first place, to pay and retain thereof all costs, charges, and expenses of or incidental to the negotiations, preparation and execution of these presents, and of or to the carrying of the same into effect.

2. That the same is for the use and benefit of all of the creditors of First Party, as shown on said

Assignment for the Benefit of Creditors Between Tigrett Industries, Inc. and Its Creditors

Schedule attached hereto, and to pay, divide and distribute the residue of the moneys unto and among said creditors in discharge of their debts in semi-annual installments, as follows: July 1, 1965; January 1 and July 1, 1966; and January 1 and July 1, 1967; and with a final distribution payment to be made on January 1, 1968.

3. That all of the property hereby conveyed is for the security of the creditors named and described herein, and for the performance of the terms of this agreement.

4. The final distribution under this assignment shall be made as of January 1, 1968, and this assignment, and all obligations and duties imposed under it, shall terminate as of that date. Until said termination, either of said Trustees named herein may act alone and without concert with the other, upon said procedure being agreed upon by and between the Trustees.

IN WITNESS WHEREOF, the First Party has hereunto caused this agreement to be executed by its duly authorized officers, on the day and date first above written.

TIGRETT INDUSTRIES, INC.,
By JOHN BURTON TIGRETT
First Party

ATTEST:

HEWETT TOMLIN, JR.
Secretary

Assignment for the Benefit of Creditors Between Tigrett Industries, Inc. and Its Creditors

State of Tennessee:
County of Madison:

Personally appeared before me, George Bennett, a Notary Public, in and for the State and County aforesaid, John Burton Tigrett, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be Chairman of the Board of Tigrett Industries, Inc., the within named bargainor, a corporation, and that he as such Chairman of the Board, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Chairman of the Board.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, at office, in said State and County, this the 26 day of April, 1965.

GEORGE BENNETT
Notary Public

My commission expires: Oct. 22, 1967

(Seal)

Assignment for the Benefit of Creditors Between Tigrett Industries, Inc. and Its Creditors

ACCEPTANCE OF ASSIGNMENT

State of Tennessee:
County of Madison:

W. E. Terry, being duly sworn, on his oath says he is the V. Chm & T. O. of The First National Bank of Jackson, Tennessee, named as one of the Assignees or Trustees in a certain indenture of assignment for the benefit of certain creditors, executed by Tigrett Industries, Inc., under date of the 26 day of April, 1965, that the said First National Bank of Jackson, Tennessee, hereby accepts the trust imposed upon it as one of such Assignees or Trustees, and it will faithfully discharge the duties of such trust to the best of its ability and in accordance with law.

THE FIRST NATIONAL BANK OF JACKSON,
By W. E. TERRY
Vice Chairman & Trust Officer

(Seal)

Subscribed and sworn to before
me, this the 26 day of April, 1965.

George Bennett
Notary Public
My commission expires: Oct. 22, 1967

Assignment for the Benefit of Creditors Between Tigrett Industries, Inc. and Its Creditors

State of Tennessee:
County of Madison:

Simpson Russell, being duly sworn, on his oath says that he is the Chairman of the National Bank of Commerce, of Jackson, Tennessee, named as one of the Assignees or Trustees in a certain indenture of assignment for the benefit of certain creditors, executed by Tigrett Industries, Inc., under date of the 26 day of April, 1965; that the said National Bank of Commerce, of Jackson, Tennessee, hereby accepts the trust imposed upon it as one of such Assignees or Trustees, and it will faithfully discharge the duties of such trust to the best of its ability and in accordance with law.

NATIONAL BANK OF COMMERCE
By SIMPSON RUSSELL
Chairman

(Seal)

Subscribed and sworn to before me,
this the 26 day of April, 1965.

George Bennett
Notary Public
My commission expires: Oct. 22, 1967

Assignment of Patent Rights by Tigrett Industries, Inc. of U. S. Letters Patent No. 3,162,865

AN ASSIGNMENT OF PATENT RIGHTS

WHEREAS, Tigrett Industries, Inc., of Jackson, Tennessee, is the owner of the entire right, title and interest in and to the following described United States Letters Patent:

Patentee	*Patent Number*	*Date*
Tigrett Industries, Inc.	3,162,865	December 29, 1964

Tigrett Industries, Inc., desires to convey the entire right, title and interest in and to this patent to Jackson Furniture Corporation, a Tennessee corporation, having its principal place of business in the County of Madison, City of Jackson, State of Tennessee, and whereas, the said Jackson Furniture Corporation desires to acquire this patent;

NOW, THEREFORE, for and in consideration of the sum of One ($1.00) Dollar, cash in hand paid, and other good and valuable considerations, the receipt of which is hereby acknowledged, Tigrett Industries, Inc. does hereby sell, assign, transfer and convey unto Jackson Furniture Corporation, its successors and assigns, the entire right and interest in and to the aforesaid Letters Patent, including any division, continuations, reissues and extensions of this patent, together with all rights of action and recovery for past infringements of this patent; and Tigrett Industries, Inc. does hereby covenant and warrant that as of the date hereof it is the true and lawful owner of the entire right, title and interest in the Letters Patent, and has full right and power to convey the same and that the same is free and clear of all liens, charges and encumbrances whatsoever.

And the Jackson Furniture Corporation, the purchaser, agrees to abide by all the obligations, terms, and condi-

Assignment of Patent Rights by Tigrett Industries, Inc. of U. S. Letters Patent No. 3,102,865

tions of the seller herein, Tigrett Industries, Inc., as more specifically set forth in an agreement dated July 19, 1961, between John Burton Tigrett, of Jackson, Tennessee, and Tigrett Industries, Inc. Furthermore, as the further consideration of the transfer and sale of this patent to Jackson Furniture Corporation; in addition to the percentage payment of the purchase price for said patent to be paid pursuant to the agreement aforesaid to the said John Burton Tigrett, an individual, Jackson Furniture Corporation agrees to pay to Tigrett Industries, Inc., for a period of five (5) years, after the 21st day of December, 1964, an additional two (2%) per cent of the net selling price of all units sold, which units shall embody the use of this patented invention. "The net selling price of all units sold" shall be the amount received by Jackson Furniture Corporation from the sale of such play pens, without any deduction for discounts, commissions or selling expense. Credit may be given for returned goods.

IN WITNESS WHEREOF, both the seller and the purchaser have hereunto caused this agreement to be executed by their said officers, on this the 22 day of December, 1964.

TIGRETT INDUSTRIES, INC.
By JOHN BURTON TIGRETT

ATTEST:

HEWETT TOMLIN, JR.
Secretary

JACKSON FURNITURE CORPORATION
By S. LEO BRANCA, V. P.

ATTEST:

PAUL J. (Illegible)

Assignment of Patent Rights by Tigrett Industries, Inc. of U. S. Letters Patent No. 3,162,865

State of Tennessee:
County of Madison:

Before me, Hewett Tomlin, Jr., a Notary Public in and for the State and County aforesaid, personally appeared John Burton Tigrett, with whom I am personally acquainted, and who upon oath, acknowledged himself to be Chairman of the Board of Tigrett Industries, Inc., the within named bargainor, a corporation, and that he as such Chairman of the Board being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Chairman.

In Witness Whereof, I have hereunto set my hand and official seal, at office, in said State and County, this the 22 day of December, 1964.

Hewett Tomlin, Jr.
Notary Public

My Commission Expires January 22, 1968

Assignment of Patent Rights by Tigrett Industries, Inc. of U. S. Letters Patent No. 3,162,865

State of Tennessee:
County of Madison:

Before me, Hewett Tomlin, Jr., a Notary Public in and for the State and County aforesaid, personally appeared S. Leo Branca, with whom I am personally acquainted, and who upon oath acknowledged himself to be Vice Pres. of Jackson Furniture Corporation, the within named bargainor, a corporation, and that he as such Vice Pres., being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Vice Pres.

In Witness Whereof, I have hereunto set my hand and official seal, at office, in said State and County, this the 22 day of December, 1964.

Hewett Tomlin, Jr.
Notary Public

My Commission Expires January 22, 1968

Addendum

I, C. B. Whitlow, hereby execute this document for the purpose of stating that I have no interest whatsoever in the above described patent, or in any royalty derived therefrom.

This 21 day of December, 1964.

C. B. Whitlow

Assignment of Patent Rights by Tigrett Industries, Inc. of U. S. Letters Patent No. 3,162,865

State of Tennessee:
County of Madison:

Personally appeared before me, Hewett Tomlin, Jr., a Notary Public in and for said State and County, duly commissioned, sworn, qualified and acting, the within named C. B. Whitlow, in the foregoing and attached instrument of writing, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained.

In Witness Whereof, I have hereunto set my hand and official seal, at office, in said State and County, this the 21 day of December, 1964.

Hewett Tomlin, Jr.
Notary Public

My Commission Expires January 22, 1968

File History of United States Letters Patent No. 3,162,865

Serial No. (Series of 1960) 124668

Assistant examiner Sherry

Division No. 8

Filed complete (Date) July 17, 1961

Serial No. 124 668

Applicant(s) Tigrett, John Burton of Jackson, Tenn.

Patent Number 3162865

Dated Dec 29 1964

Claims Foreign Priority None

Number claims allowed 2

Print claim(s) 1

Class 5

Subclass 3

Assignor to Tigrett Industries, Inc., Jackson, Tenn., a corp. of Delaware.

Title of invention Nursery Unit

Sh. drw. 2

Filing fee $30

Transaction 06898

Application None

Send correspondence to:

Ralph W. Kalish
1015 Chemical Bldg.
St. Louis 1, Mo.

Principal attorney(s) Ralph W. Kalish

File History of United States Letters Patent
No. 3,162,865

Prepared for Issue

F B Sherry (Assistant Examiner)
P. M. Alexander (Docket Clerk)

Examined and Passed for Issue

July 20 1964
F B Sherry (Primary Examiner)
461 (Division)

Notice of Allowance Mailed

July 24 1964

Final Fee

Date Nov 9 1964
Amount $30

File History of United States Letters Patent No. 3,162,865

(Letterhead of)

RALPH W. KALISH

ATTORNEY AT LAW
(Illegible) 721 Olive St.
St. Louis 1, Mo.

CHmeva 6-1334

July 13, 1961

Commissioner of Patents
Washington 25, D. C.

Sir:

Herewith we hand you specification and claims, drawings, oath, power of attorney and petition in the matter of application of John Burton Tigrett for a patent for a Nursery Unit.

Also enclosed is check to your order for $30.00 in payment of the Government filing fee.

Respectfully,

RALPH W. KALISH

RWK:ih
enc.

TO ALL WHOM IT MAY CONCERN:

Be it known that I, John Burton Tigrett, a resident of the City of Jackson, County of Madison, State of Tennessee, and a citizen of the United States, have invented a certain new and useful improvement in a Nursery Unit, of which the following is a specification, reference being made to the accompanying drawings forming a part thereof.

File History of United States Letters Patent
No. 3,162,863

This invention relates in general to infant equipment, and more particularly, to an article of nursery furniture.

It is an object of the present invention to provide a nursery unit adapted for multiple purpose usage, being so constructed for easy convertibility into a play pen, a baby bed, a dressing table, or a bassinet; and the operation of which does not require developed skill on the part of the user.

It is another object of the present invention to provide an article of nursery furniture having a simplicity of parts, and adapted for ready folding into either operative position of into a collapsed, compact unit for easy portability and storage in minimum space; the component parts being sturdy for long lasting, hard, effective usage; and which is sufficiently light in weight for convenient manipulation by the average housewife.

A still further object of the present invention is to provide an article of nursery furniture which is versatile in usage; which can be most economically produced; and which is reliable and safe for infants.

Other objects and details of the invention will be apparent from the following description, when read in connection with the accompanying drawings (two sheets) wherein:

Figure 1 is a perspective view of a nursery unit constructed in accordance with and embodying the present invention, with portions of the netting being broken away, and showing the unit in full downward position for use as a play pen.

Figure 2 is a vertical view taken on the line 2—2 of Figure 1.

File History of United States Letters Patent
No. 3,162,865

Figure 3 is a horizontal transverse sectional view taken on the line 3'-3 of Figure 1.

Figure 4 is a bottom plan view.

Figure 5 is a side view showing the unit in upper position for utilization as an infant dressing table.

Referring now by reference characters to the drawings which illustrate the preferred embodiment of the present invention, A generally designates an article of infant furniture herein for sake of brevity referred to as a nursery unit, adapted for multiple purpose usage, comprising an upper, generally rectangular rim or frame 1 having side portions 2, 2' and parallel and sections 3, 3' and being fabricated preferably of light weight, tubular stock. Affixed to said upper rim 1 adjacent each corner portion thereof is a depending, short, mounting bracket 4 to each of which is pivotally engaged the upper end of a leg 5. Said legs 5 are of two part construction comprising an upper tubular section 6 and a lower tubular section 7, the latter being of relatively reduced diameter for reception within the associated upper section 6 in telescoping relationship thereto. Carried at the lower end of each lower section 7 is a caster 8 for ease of maneuverability of nursery unit A. Upper leg section 6 is provided, substantially throughout its lengths, with a plurality of vertically spaced openings 9 for selective extension therethrough of an adjustment, button-like member 10 resiliently mounted on a leaf spring 11 secured within the related lower section 7 adjacent the upper end thereof for urging adjustment member 10 outwardly for the reliable inter-

against an by one's finger, within the circular enlarged opening 9 in the respective upper leg section 6, lower section 7 may be then limitedly rotated and thereon axially moved with respect to the associated upper section 6 until the selected relationship is effected. Thereon, the said lower section is returnwardly rotated to permit adjustment member 10 to spring outwardly through the adjacent opening 9a and hence thereby lock said sections together. Thus legs 5 may be of any chosen length and hence dependent upon the convenience and comfort of the operator.

Sections 6 of transversely aligned legs 5 are interengaged by a cross bar 8 (see Figure 3), whereby each such pair of interconnected legs may be mutually swung about the pivot at the upper ends of said legs between operative or vertical position of legs as in Figure 1 and folded or inoperative position (not shown), wherein said unitary unit 8 is collapsed into a compact form conducive to ease of transportability and to storage in minimum space.

Suspended from upper cross 8, throughout its entire length, is netting or mesh 12, as of nylon fabric or the like, and having an inherent resiliency, which is formed into general tubular or cylindrical shape with its lower end normally biased inwardly toward axis of said cylinder (see Figure 4). Central weight and cylindrical netting 12 lie in positions substantially perpendicularly to the axis of said netting (Figure 1). Said lower edge 12 normally rests substantially upon the ground surface, and thereby prevents the escape of the fish and the like, and hence a fisherman desirably may conveniently, to that end, grasp upper cross 8 and lift substantially the entire

File Wrapper of United States Letters Patent
No. 3,162,865

...ges of said netting 12 are connected by an ...ed flexible member or drawstring, such as, of a ... of string, rope or the like, as indicated at 15, which ... through openings in said netting and with its ... ends passing upwardly through spaced openings ... plate 14. The upwardly projecting free ends ... drawstring 15 are secured together to provide a ... grip for pulling the lower end portion of net ... together, to take up any slack that may have ... during any converting operation so that the ... will be taut during usage.

... is also provided centrally of base plate 14 a ... member 16, as of rope, to facilitate manipulation ... plate 14 as may be required during adjustment of ...

... plate 17 is removably supported upon a rectangular ... frame or rim member 18, of similar shape and size ... the latter disposed in planar parallel relation ... and being formed preferably of suitable ... Lower frame 18 is freely received upon ... a pair of legs 19 and adjacent each leg 19 ... a bolt 20 which extends laterally outwardly, each ... bolt 20 corresponding relative to the proximate leg ... and partially upwardly mounts a bolt nut ... adapted for engagement within an opening 21 of the ... leg 19 and proximate leg 19, which is ... frame 18 may be supported by said legs 19 ... adjusted upwardly to the top end 22 ...

distinct entities. Thus, as shown in Figure 1, with base plate 14 in full downward position unit A is accorded the character of a play pen, with the distance between said plate 14 and top rim being sufficiently great to provide safety for an infant playing therein. In this condition netting 12 is fully extended and presents a yieldable, reliable side guard for an infant. It will be seen that hooks 20 are in disengaged relation as lower frame 18 is in supported position on cross bars *b*.

If it is desired to utilize unit A for an infant dressing table, such as shown in Figure 3, the user lifts upwardly on one end of lower frame 18 to present same for reception of the hooks 20 at such end in the uppermost opening 9 in the adjacent leg sections 6, and then similarly raises the other end and engages the related hooks 20, whereby base plate 14 will be disposed in horizontal position. In this condition there would, expectedly, be a considerable amount of slack in netting 12, and to correct such, the user need only pull upwardly on drawstring 16 until the portions of netting between top and lower frames 1, 18, respectively, is substantially taut, as such operation pulls the lower edge of netting 12 together and thus contracts netting 12 for accommodating the particular condition of usage of unit A.

In similar fashion base plate 14 may be located at a point between the positions shown in Figures 1 and 4, in order to adapt unit A for service as a baby bed and as a bassinet. The converting operation in each such case is in all respects similar to that above described in connection with the dressing table construction, but with hooks 20 being received in openings 9 between the uppermost and

plate 14 e presented by unit A so that a similar article of furniture may now provide facilities heretofore obtained only by use of a plurality of such articles.

It is apparent that unit A may be easily collapsed into a compact unit for ready transportability or storage in limited space with operation merely requiring the telescoping of the lower leg sections 7 within their associated upper sections, with lower frame 18 together with base 14 being lifted upwardly into immediate contactive relationship with top frame 1 and then merely folding the two pair of legs toward each other into nestled relationship.

As shown hereinabove, lower frame member 18 will be supported upon cross bars *b* only when unit A is being used as a play pen and in this condition hooks 20 will be in disengaged relation. However, as the bottom plate 14 is adjusted upwardly for other uses than as a play pen as described, the said lower frame 18 will be supported directly from legs 3 by means of the interengagement of hooks 20 within the related openings 9.

It is of course obvious that the base plate 14 is designed to receive a mattress or other type pad for infant comfort.

In view of the foregoing it is obvious that the present invention is an extremely versatile device being capable of conversion for various infant usages and with such conversion being accomplished by the average housewife without the exercise of developed skill. Furthermore, the device unit A is most maneuverable and is endowed with a capacity for quiet, rendering it sturdy and stable in use and amenable to economical production.

tion of the several parts of the nursery unit may be made and substituted for those herein shown and described without departing from the nature and principle of my invention.

Having thus described my invention, what I claim and desire to secure by Letters Patent is:

[Claims 1 to 7 inclusive deleted (in original)]

[Amendment A printed hereinafter]

STATE OF TENNESSEE, COUNTY OF MADISON, ss:

Before me, a Notary Public in and for the State and County aforesaid, personally appeared John Burton Tigrett, to me known, who, being duly sworn, deposes and says that he is a citizen of the United States residing at the City of Jackson, County of Madison, State of Tennessee; that he has read the foregoing specification and claims and that he verily believes that he is the original first and sole inventor of the invention or discovery in a Nursery Unit, described and claimed therein; that he does not know and does not believe that this invention was ever known or used before my invention or discovery thereof, or patented or described in any printed publication in any country before my invention or discovery thereof, or more than one year prior to this application, or in public use or on sale in the United States for more than one year prior to this application; that this invention or discovery has not been patented in any country foreign to the United States on an application filed by me or my legal representatives or assigns more than twelve months before this application; that he is not acquainted with the facts stated in the foregoing affidavit except from information received by him; and that he believes the statements made in this affidavit to be true.

Subscribed and sworn to before me this 14th day of November, 1938.

(SEAL)

Notary Public

My commission expires: 3-15-1939

POWER OF ATTORNEY AND PETITION

Being duly sworn, I, John Burton Tigrett, depose and say that I am a citizen of the United States residing at the City of Jackson, County of Madison, State of Tennessee; that I have read the foregoing specification and claims and I verily believe I am the original first and sole inventor of the invention or discovery in a Nursery Unit, described and claimed therein; that I do not know and do not believe that this invention was ever known or used before my invention or discovery thereof, or patented or described in any printed publication in any country before my invention or discovery thereof, or more than one year prior to this application, or in public use or on sale in the United States for more than one year prior to this application; that this invention or discovery has not been patented in any country foreign to the United States on an application filed by me or my legal representatives or assigns more than twelve months before this application; that he is not acquainted with the facts stated in the foregoing affidavit except from information received by him; and that he believes the statements made in this affidavit to be true.

File History of United States Letters Patent No. 3,162,865

And I hereby appoint Ralph W. Kalish, 1015 Chemical Building, 721 Olive Street, St. Louis 1, Missouri, Registration No. 16,210, my attorney or agent with full power of substitution and revocation, to prosecute this application and to transact all business in the Patent Office connected therewith.

Wherefore, I pray that Letters Patent can granted to me for the invention or discovery described and claimed in the foregoing specification and claims, and I hereby subscribe my name to the foregoing specification and claims, oath, power of attorney, and this petition, this 10 day of July, 1961.

Jonas Burgos Tigrett
Tigrett Place
Jackson, Tennessee

File History of United States Letters Patent
No. 3,162,865

State of Tennessee
County of Madison—ss.:

Before me personally appeared John Burton Tigrett, to me known to be the person described in the above application for patent, who signed the foregoing instrument in my presence, and made oath before me to the allegations set forth therein as being under oath, on the day and year aforesaid

Edward A. Arrowwrite
Notary Public

My commission expires June 28, 1964

3,162,865

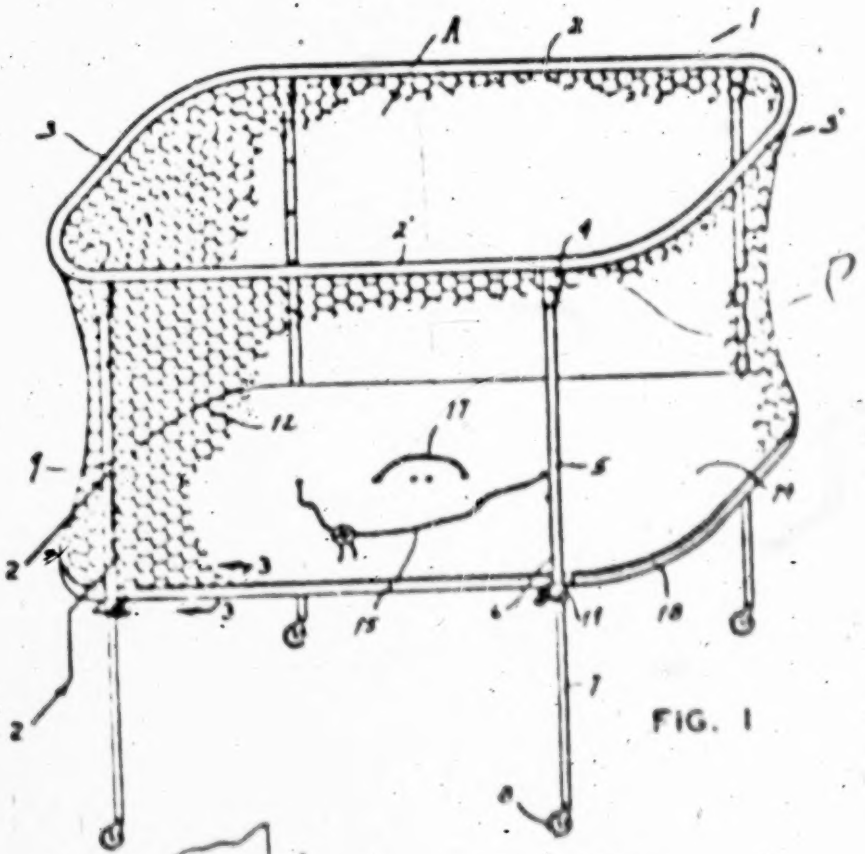


FIG. 1

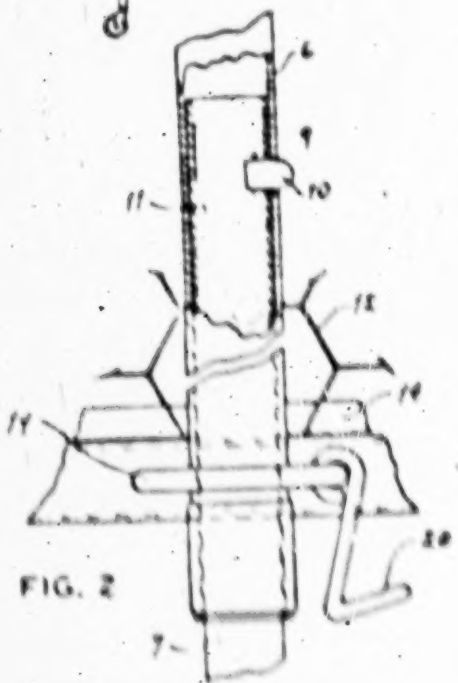


FIG. 2

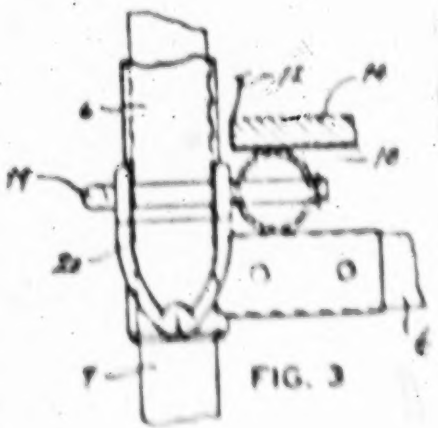


FIG. 3

INVENTOR
JOHN BURTON THURETT
BY
ATTORNEY

File History of United States Letters Patent No. 3,162,865

Claims 1-3 are rejected as readable on the patent to Adamson, cited. Adamson discloses applicant's broad combination including upper and lower frames 10, 21, U members 22, cylindrical shaped netting 18 and a draw string 34.

Claim 4 is rejected as unpatentable over the patent to Adamson in view of the patent to May et al., cited. To provide holes in Adamson's floor member 27 so that his draw string 32 could be threaded therethru to thereby be more easily actuated would be an obvious extension of the teaching of May et al. (strings 21).

Claims 5 and 7 are rejected as unpatentable over the patent to Adamson in view of the patent to Wittbrodt, cited. To make the legs 15 of Adamson from two telescoping sections would be obvious in view of the telescoping legs 12, 13 of Wittbrodt.

Claim 6 is rejected as unpatentable over the patent to Adamson in view of the patents to Wittbrodt and Hamilton, cited. To make the legs 15 of Adamson telescoping would be obvious in view of the teaching of Wittbrodt. To additionally utilize the spring 21 of Hamilton to lock the telescoping legs at various positions would be well within the skill of a mechanic. Hamilton also discloses the old the use of a crossbar element 18A to connect two pivoting legs.

Claims 8-10 are rejected.

Evans H. Sweeney
Examiner

EHS
EHSorley:cjh

90

File Wrapper of United States Letters Patent
No. 3,162,866

IN THE

UNITED STATES PATENT OFFICE

PATENT DIVISION

Application of
John Burton Tuttle
Serial No. 124,668
Filed July 17, 1961

Nursery Tool

The Commissioner of Patents
Washington 25, D. C.

In the matter of subject application, would you please
alter the record thereof so as to reveal applicant's attor-
ney's address as 1901 Chemical Building, St. Louis 1,
Missouri, rather than 101 Chemical Building, St. Louis 1,
Missouri.

Respectfully,

Raven W. Ravenn
Attorney for Applicant

St. Louis, Missouri

October 20, 1961

File History of United States Letters Patent
No. 3,162,865

IN THE

UNITED STATES PATENT OFFICE

PATENT DIVISION 8

Application of
John Burton Tigrett
Serial No. 124,008
Filed July 17, 1961

Nursery Unit

AMENDMENT A

The Commissioner of Patents
Washington 25, D. C.

Sir:

Responsive to the official communication of May 3, 1962, please amend the above-identified application as follows:

Cancel claims 1 to 7 inclusive without prejudice.

Please add the following

for convenient manipulation for said netting to elevate said base plate, a bottom frame member in planar parallel relation to said top frame member and disposed below said base plate for support thereof, legs engaged at their upper ends to said top frame member and extending downwardly therefrom, and means for detachably engaging said bottom frame member to said legs.

9. An article of infant furniture as defined in claim 8 and further characterized by said legs being pivotally engaged at their upper ends to said top frame member for swingable movement between vertical or operative position and horizontal or collapsed position, and said means detachably engaging said bottom frame member to said legs comprising a plurality of leg-surrounding elements fixed to said bottom frame member and extending outwardly therefrom, each leg having a plurality of vertically spaced apart openings, and a hook forming member swingably mounted upon each leg-surrounding member for selected engagement within an opening in the proximate leg.

[Claim 10 deleted—see Amendment B hereinafter]

REMARKS

Claims 1 to 7 have been cancelled without prejudice and in lieu thereof, there have been submitted claims 8, 9 and 10 which seek to define in more definite fashion the especial advance made in the art by applicant. Thus, claim 8 differs from the preceding claims and references of record in defining an article of infant furniture comprising a top frame member, a base plate, a flexible netting having a general tubular form, a bottom frame member and with said flexible netting extending beneath the base plate with drawstrings engaged at the lower end of said netting and

extending through openings in the base plate for mutual securement to allow for convenient manipulation of the base plate. Claim 9, which is dependent upon claim 8, differs in defining the legs as being pivotally engaged at their upper ends to the top frame member and in reciting the structure which permits of the engagement of the bottom frame member to the legs in preselected position. Claim 10, which is dependent upon claim 9, differs in defining each of the legs as having an upper tubular section and a lower section telescopically received therein with means permitting of selected relative extent thereof. Careful consideration of the references of record fail to reveal any answering structure and accordingly favorable consideration of claims 8, 9 and 10 is respectfully urged.

Respectfully submitted,

RALPH W. KALISH
Attorney for Applicant

St. Louis, Mo.

October 29, 1962

File History of United States Letters Patent
No. 3,162,865

(Letterhead of)

U. S. DEPARTMENT OF COMMERCE
PATENT OFFICE
Washington

Ralph W. Kalish
1604 Chemical Bldg.
St. Louis 1, Missouri

Paper No. 10

Applicant: John Burton Tigrett
Ser. No. 124,668
Filed July 17, 1961
For Nursery Unit
Mailed Nov 23 1961
Pat Div 8

Please find below a communication from the Examiner in charge of this application.

Commissioner of Patents.

Responsive to amendment filed November 1, 1962.

Additional reference applied:

Wolkerstorfer	947,140	Jan. 18, 1910	211/136

Additional reference of interest:

Nowels	2,930,053	Mar. 29, 1960	5/320

Claim 8 is rejected as unpatentable over the patent to Adamson, of record, in view of the patent to May et al, of record. To provide holes in Adamson's floor member

27 so that the drawstring 32 would be easily accessible would be an obvious extension of the teaching of May et al.

Claims 9 and 10 are rejected as unpatentable over the patent to Adamson in view of the patents to May et al, Hamilton, of record, and Wolkerstorfer, newly cited. To further modify the device of claim 8 by pivotally mounting the legs 13 of Adamson to thereby provide greater collapsibility for the device would be obvious in view of the pivoted legs 14 of Hamilton. To additionally substitute for the spring urged pin 26 of Adamson, the pivoted hook 19 of Wolkerstorfer would be only the substitution of equivalents. In regard to claim 10, the patent to Hamilton also illustrates as old telescoping leg sections and a spring urged lock therefor (see Fig. 10).

Attention is directed to the patent to Nowels, cited. Nowels discloses as old the provision of a center hole through which tightening strings are extended to thereby provide easy accessibility.

Claims 1-7 have been cancelled.

Claims 8-10 are rejected.

FRANK B. SHERRY
Acting Examiner

KBJ
R. B. Farley:lmb

File History of United States Letters Patent
No. 3,162,865

Paper No. 7

IN THE

UNITED STATES PATENT OFFICE

PATENT DIVISION 8

Application of
John Burton Tigrett
Serial No. 124,668
Filed July 17, 1961

Nursery Unit

AMENDMENT B

The Commissioner of Patents
Washington 25, D. C.

Sir:

Responsive to the official communication of November 23, 1962, please amend the above-entitled application as follows:

Claim 8, line 8, after "netting" insert—beneath said base plate—; line 9, after "threaded" insert—upwardly—; line 10, after "engaged" insert—above said base plate—; line 12, after "plate" insert—by upward pulling on said handle—.

Claim 9 is submitted for reconsideration for reasons to be discussed hereinbelow.

Cancel claim 10.

REMARKS

Claim 8 has been amended to recite that the drawstrings are engaged to the lower end of the netting below the base plate and that said drawstrings are threaded upwardly through the openings for mutual engagement above the base plate and that the same by pulling upwardly thereon

will effect elevation of the base plate. It is submitted that said claim, as now amended, clearly defines patentable subject matter over the references of record. The Examiner will recognize that applicant's clever and ingenious use of the drawstrings provides a readily accessible expedient for elevating and lowering the base plate. Such means do not necessitate the users having to work beneath the base plate as would be required in the Adamson construction. Thus, one would have to operate the drawstrings of Adamson from beneath the base plate rather than from above same, and it is very obvious that such could only be highly inconvenient and cause one to be resistant to vertically adjusting the base plate. The May, et al reference is not pertinent, since the same merely shows the tying together of the cords 19. The mutually engaged ends of such cords are not adapted to provide a handle for effecting any operative movement of any part, or parts, of the cradle. The cords of May, et al are merely means for supporting the fabric member 18 and to allow of its removal for cleaning purposes. Thus, neither the references cited, whether considered singly or in combination, suggest the unusual construction defined in claim 8. Accordingly, favorable consideration of claim 8 as now amended is respectfully solicited.

Claim 9 has been submitted for reconsideration in view of the fact that the same is dependent upon claim 8. For the reasons hereinabove stated, it is believed that claim 8 is definitely allowable and that allowance of claim 9 should follow therefrom.

Accordingly, favorable reconsideration of claim 9 is requested.

Respectfully submitted,

RALPH W. KALISH

St. Louis, Missouri

May 7, 1963

File History of United States Letters Patent
No. 3,162,865

Paper No. 8

(Letterhead of)

U. S. DEPARTMENT OF COMMERCE
PATENT OFFICE
Washington

Ralph W. Kalish
1604 Chemical Bldg.
St. Louis 1, Missouri

In Reply Please Refer To:

Applicant: John Burton Tigrett

Ser. No. 124,668

Filed July 17, 1961

For Nursery Unit

Mailed Dec 12 1963

Group 480

Please find below a communication from the Examiner in charge of this application.

Commissioner of Patents.

This is responsive to the amendment filed May 10, 1963.

Additional consideration of applicant's device makes it evident that the construction and operation of the device are not clearly disclosed. In Figures 4 and 5 there is shown what appears to be a rectangular plate-like member attached upon the upper side of members "b", but no reference is made thereto in the specification. It is not

clear how the legs 5 could be folded together with this member present. Clarification is required.

Page 5, line 18, "11" should be *b;* line 26, "4" should be *14.*

Page 6, line 10, "in" should be *on.*

Claim 8, lines 11 and 12, "handle" should be *grip* in each instance.

Claims 8 and 9 are rejected as drawn to subject matter not sufficiently disclosed for the reasons above indicated.

Claims 8 and 9 are further rejected as vague and indefinite and drawn to subject matter not clearly disclosed in reciting the "means" for detachably engaging said legs". No such "detachment" is disclosed since the U-bolts at all times enclose the legs. Hooks 20, perhaps, are intended as detachably engaging the legs.

Since no new references have been applied, the above rejections are now made final.

Claims 1-7 and 10 have been cancelled.

This is a Final Rejection.

F B SHERRY
Examiner

FBSherry/lm

File History of United States Letters Patent
No. 3,162,865

IN THE UNITED STATES PATENT OFFICE

PATENT DIVISION 8

Application of
John Burton Tigrett
Serial No. 124,668

Filed July 17, 1961

Nursery Unit

AMENDMENT C

The Commissioner of Patents

Washington 25, D. C.

Sir:

Responsive to the official communication of December 12, 1963 and pursuant to the provisions of Rule 116 of the Patent Office Rules of Practice, Applicant requests that the above-entitled application be amended as follows for placing same in condition for allowance:

In the specification, Page 5; Line 18, change "11" to —*b*—; same page, Line 26, change "4" to —14—; Page 6; Line 10, change "in" to —on—.

Claim 8, Lines 11 and 12, change "handle" to —grip—; Line 16, erase "detachably".

REMARKS

Examiner's remarks relative to the seeming rectangular plate-like member shown in Figure 4 are indeed very well justified. Candidly Applicant had overlooked this

aspect of the matter, for it relates entirely to the provision of an auxiliary shelf which a user may use, should she so desire. In order to clarify this matter, Applicant is enclosing herewith a specimen of its advertising brochure concerning the device in question, and Examiner will note on the inside right-hand page drawings with respect to this particular shelf member which is shown in Figures 4 and 5. Thus, Examiner will appreciate that the shelf is entirely of an auxiliary character and is not necessarily a part of the invention.

Applicant is prepared to either amend the specification so as to describe this shelf which may be detachably engaged to the cross bars *b* (and with disengagement being effected prior to folding of the unit), or the shelf may be entirely removed from the drawings, particularly Figures 4 and 5. It is felt that either course will clarify the seeming indefiniteness of the disclosure and thereby permit the application to provide a proper basis for claims 8 and 9.

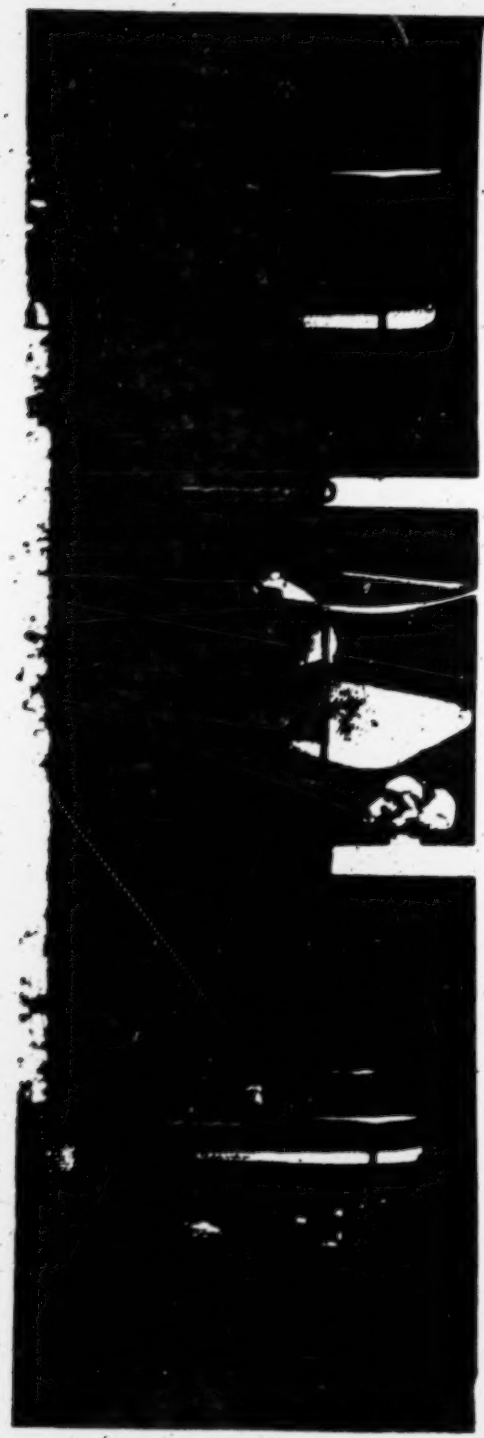
In order to expedite the disposition of this case, Applicant urges Examiner to call Applicant's counsel long distance, collect, at St. Louis, Missouri, Area Code 314, Telephone GE 6-1331, at Examiner's earliest convenience. It is felt that a telephone conference will determine the desirable course for clarifying what is indeed an inadvertent error.

Respectfully submitted,

RALPH W. KALISH

St. Louis, Missouri

May 8, 1964



GOLDEN Convertible

The most ... piece of Infant Furniture ever offered. It's actually

Converts from one Service Unit to another in seconds—*and with NO EXTRAS TO BUY!*

THE GOLDEN CONVERTIBLE

Has all the wonderful features of the Original Net PLAY-A-ROUND plus new, modern space saving design that utilizes every inch of floor space—rolls through doors—and provides a safe, comfortable sleeping or play area throughout the infant period. The simplicity of modern, useful design, is combined with the charm and beauty of Antique Gold to give you complete baby care in one unit while enhancing the decor of any room.

TOPS
FOR
TOTS
FROM

Thayer Inc.

GARDNER MASSACHUSETTS

GOLDEN Convertible

Application of John Burton Tigrett

Serial No. 24,655

Filed July 17, 1961

4 UNITS IN ONE

Complete Baby Care from Birth to ...

1082-1

Play Pen

Dressing Table

Bassinet

Baby Bed

30

Complete Baby Care

4 UNITS *in One!*

PEN • DRESSING TABLE
BASSINET • BABY BED

- All Steel Framework
- Tough Nylon Safety Net
- Roll-A-Bout Casters

GOLDEN *Convertible*

- EXTRA THICK, WET PROOF MATTRESS
- SETS UP OR FOLDS IN SECONDS
- TELESCOPING LEGS AND POSITIVE ROTARY LATCHES
- HEAVY DUTY MASONITE [illegible] AND SHELF

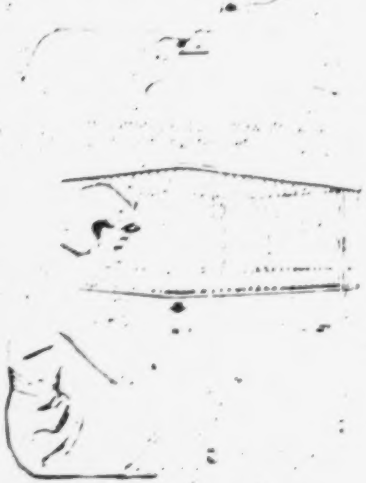
108-2 KKK

TO ASSEMBLE PLAY PEN

CONVERT TO BABY BED

Press Spring [illegible] Spring [illegible] slightly and [illegible] button engages [illegible] Repeat until all four [illegible]

CONVERT TO BASSINET

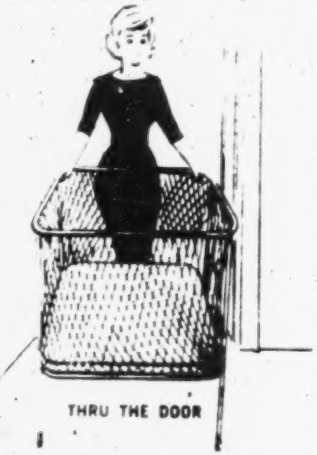


CONVERT TO - DRESSING TABLE

Described Steps

TO FOLD

B. Remove shelf, loosen net and return unit to its play pen position. Remove mattress and pull bottom straight up with hand cord. Fold legs and unit is ready for easy storage.



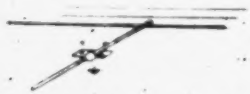
THRU THE DOOR

THE GOLDEN CONVERTIBLE was especially designed for easy maneuverability. It will roll from room to room thru any standard door.

Both the Top Poly Rim and the Nylon Net are washable. You can clean the rim by simply wiping with a damp cloth.

TO CLEAN NET.

A. Remove Poly Rim and lacing hold- [illegible] over top metal rim.



B. Remove two screws in masonite [illegible] untie draw string and remove stop. pull thru bottom. remove bottom and net will remove easily. Tie ends of draw string temporarily while washing. Wash in basin or automatic washer at lukewarm temperature.

File History of United States Letters Patent
No. 3,162,865

IN THE UNITED STATES PATENT OFFICE

PATENT DIVISION 8

Application of
John Burton Tigrett
Serial No. 124,668
Filed July 17, 1961

Nursery Unit

AMENDMENT D

The Commissioner of Patents
Washington 25, D. C.

Sir:

Responsive to the telephone communication with Examiner on Thursday, May 28, 1964, which call applicant deeply appreciated, please amend the above entitled application for the purpose of clarifying the disclosure:

In the Specification: Page 7, after the last line insert as a paragraph:- - - As may best be seen in Figures 4 and 5 an auxiliary shelf, indicated 25, may be provided for supported disposition upon cross bars *b*. When unit A is used as a dressing table or as a baby bed, in which positions base plate 14 is located spacedly upwardly of said cross bars *b*, said shelf 25 will be available for usage but with unit A in playpen position base plate 14 may be disposed upon said shelf 25 or the latter may be first removed. Said auxiliary shelf 25 may be of rectangular character and secured upon cross bars *b* in any suitable, stable fashion such as, for instance, by means of screws 26. The said shelf 25 will necessarily be disengaged prior to

folding of unit A into collapsed condition. Said shelf 25 thus provides a surface for holding the various articles necessary for proper baby care and attention. - - -

REMARKS

In accordance with Examiner's helpful suggestion, the Specification has been amended to describe the auxiliary shelf.

Simultaneously herewith applicant is forwarding to the Patent Office a letter to the official Draftsman, requesting that the drawings be amended in accordance with the enclosed photostat for showing the reference numerals necessarily added.

It is therefore submitted that the above entitled application is now in proper condition for allowance which is requested at Examiner's earliest convenience.

Respectfully submitted,

RALPH W. KALISH

St. Louis, Missouri

May 29, 1964

File History of United States Letters Patent
No. 3,162,865

IN THE UNITED STATES PATENT OFFICE

PATENT DIVISION 8

Application of
John Burton Tigrett

Serial No. 124,668

Filed July 17, 1961

Nursery Unit

LETTER TO OFFICIAL DRAFTSMAN

The Commissioner of Patents

Washington 25, D. C.

Sir:

Please correct the drawings in the above-entitled application in accordance with the photostat enclosed herewith. Please charge the cost of such correction to my deposit account, No. 11-160.

Respectfully submitted,

RALPH W. KALISH
Attorney for Applicant

May 29, 1964

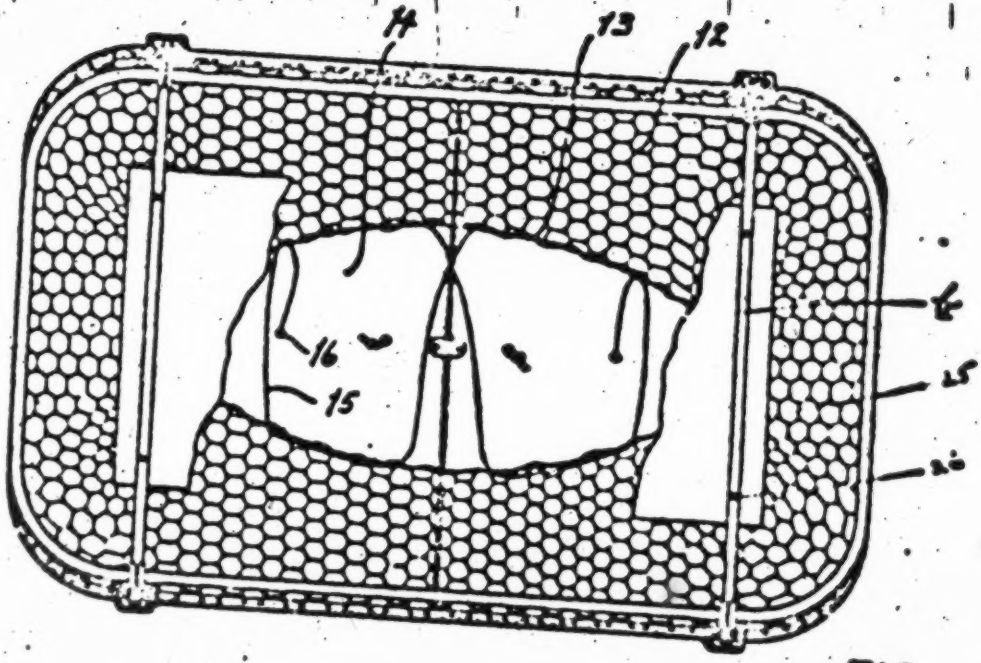


FIG. 4

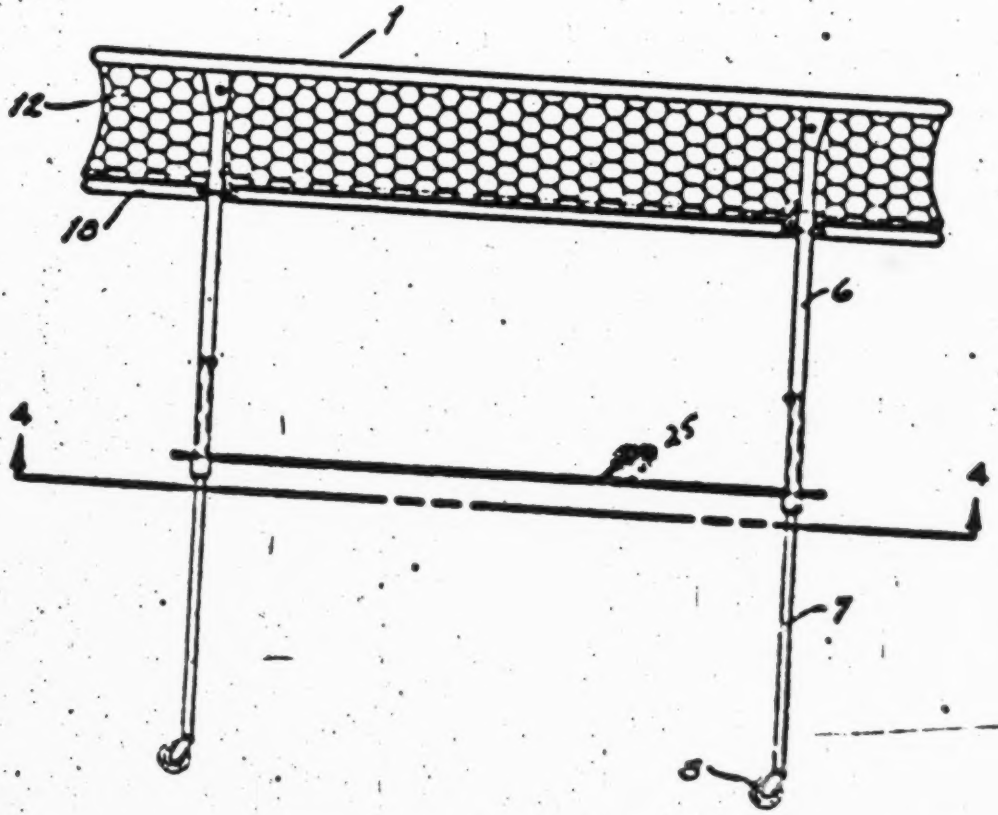


FIG. 5

File History of United States Letters Patent No. 3,162,865

Paper No.: 12

Serial No.: 124,668

REFERENCES CITED

The following references are of record in the patented file of this patent:

United States Patents

Name	*Number*	*Date*
Wolkerstorfer	947,140	Jan. 18, 1910
Nelson	1,336,480	April 13, 1920
Mars et al	2,562,053	July 24, 1951
Adamson	2,873,458	Feb. 17, 1959
May et al	2,966,744	Dec. 15, 1959
Werner	2,922,169	Jan. 26, 1960
Nowels	2,930,053	Mar. 29, 1960
Mango	2,974,325	Mar. 14, 1961
Hamilton	2,991,486	Jan. 30, 1962
Wistbrodt	3,018,493	July 11, 1961

File History of United States Letters Patent
No. 3,162,865

(Letterhead of)

U. S. DEPARTMENT OF COMMERCE

Patent Office

Washington

NOTICE OF ALLOWANCE

The application for patent identified below has been examined and found allowable for issuance of Letters Patent.

Filing Date 07/17/61

Serial No. 124668

No. of Claims Allowed 2

Examiner F. B. Sherry Group 46

Applicant Tigrett, John Burton, Jackson, Tenn.

Assignee Tigrett Industries, Inc.

Mailed July 24, 1964

Title of Invention Nursery unit

Class Bus 005/003

With the allowance of the application the final fee becomes due. This fee is thirty dollars ($30) plus one dollar ($1) for each claim allowed in excess of twenty (20) and must be paid within 6 months from the date of this notice. Failure to remit the final fee will result in the patent being withheld from issue.

As a convenience in remitting this fee, use of the enclosed Form POL-85a is suggested. The final fee will not be

received from anyone other than the applicant, his assignee or attorney, or a party in interest as shown by the records of the Patent Office. If no entry appears in the space labeled "assignee," above, a form is enclosed relating to the address of the inventor(s) which requires your attention.

If it is desired to have the patent issued to an assignee or assignees, an assignment, together with the fee for recording the same, must be filed in this Office on or before the date of payment of the final fee.

The patent will be issued and forwarded within approximately two months after receipt of the final fee.

By direction of the Commissioner.

Ralph W. Kalish
1604 Chemical Bldg.
St. Louis 1, Mo.

U. S. Department of Commerce
Patent Office

FINAL FEE TRANSMITTAL

This [illegible] for convenience in transmitting final fees to the Patent Office. When properly completed it may be used in lieu of a formal letter. Requirements will more and fill in every numbered item 1 thru 6 below. The Final Fee Receipt, [illegible] will be mailed to the address appearing in box at lower left of this form. If returned, see the reverse side of your Notice of [illegible] when completing this form.

1. The COMMISSIONER OF PATENTS is requested to apply the accompanying fee to the case identified below, and deliver the patent as directed.

November 6, 1964
Date

Roger W. Jones
Attorney, Agent or Applicant

NOTE—Final fees will not be received from other than the applicant, his assignee, or attorney, or a party in interest as shown by the records of the Patent Office. Final fees will not be applied to pending applications.

	FILING DATE	SERIAL NO.	NO. OF CLAIMS ALLOWED	EXAMINER	GROUP
	07/17/61	124668	21	F. B. Shatty	46
APPLICANT	Tigrett, John Burton, Jackson, Tenn.			MAILED July 24, 1964	
ASSIGNEE	Tigrett Industries, Inc.				
TITLE OF INVENTION	Nursery unit			NOTICE OF ALLOWANCE DATE CLASS/SUB 005/003	

2. DEPARTMENT. (Indicate below if desired) Notice of May 27, 1964
"DEPARTMENT OF ISSUE OF PATENTS"
Published June 16, 1964
O. G. Vol. 803 page 633

3. FEE ENCLOSED
30.00

4. Assignee: (If assigned and name does not appear in the corresponding space above)

[illegible]

MAILING INSTRUCTIONS

Note—The office will send the patent to the address entered in stub at left below unless you direct otherwise. Use the spaces provided to indicate any changes which affect the delivery of the patent.

5. Do not send the patent to the address listed below. Send patent to (check one)

- ☐ Patentee
- ☐ Associate Attorney (See specific authorization in file)
- ☐ Assignee
- ☐ Change of address—Attorney

The address of the person checked above is typed in item 6 below.

6.

United States District Court

for the

District of Delaware.

COMMISSIONER OF PATENTS,
Washington 25, D. C.

Sir: (Wilmington)

NOV. 1965

U.S.

In compliance with the Act of July 19, 1952 (66 Stat. 814; 35 USC 290), you are advised that there was filed on the 29 day of November, 1965, in this court an action, No. 3121, entitled:

Name Standard Industries Inc., Plaintiff,

Address 120 wall Street New York N Y

versus

Name Tagrett Industries Inc., Defendant,

Address Wilmington, Delaware

brought upon the following patents:

	PATENT NO.	DATE OF PATENT	PATENTEE
1	2,790,978	May 7 1957	C.B.Whitlow
2	2,990,190	June 27 1961	L.A.Erickson
3	Application 124668,	July 16 1961	C.B.Whitlow
4	3,142,565	and 12/29/64.	
5			

In the above-entitled case, on the day of , 19 , the following patents have been included by (insert amendment, answer, cross bill, or other pleading):

	PATENT NO.	DATE OF PATENT	PATENTEE
1			
2			
3			
4			
5			

In the above-entitled case the following decision has been rendered or judgment issued:

EDWARD C. POLLARD
Clerk.

Date Nov 29 1965 19

By Henry L Scholly
Deputy Clerk.

124668

5-3

SEARCHED

Class	Sub	Date	Ex'r
5	1, 3, 11	4/26/02	CDS
5.1	126, 14	11/8/02	CDS
54*	26	11/19/02	CDS

INTERFERENCE SEARCHED

CLASS	SUB	DATE	EX'R
5	3 8 11 98 99	6/10/04	JVU

INDEX OF CLAIMS

Claim Final	Claim Original	Date	Claim Final	Claim Original	Date
	1	4/26/02		61	
	2	11/8/02		62	
	3			63	
	4			64	
	5			65	
	6			66	
	7			67	
	8			68	
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	60			120	

SYMBOLS	STATUS
/	Rejected
=	Allowed
- (Through numeral)	Canceled
+	Restriction requirement
N	Non-elected invention or species
I	Interference
A	Appeal

IN-1009-0

6-22-64

124063

CONTENTS

1. Application papers.
2. Print July 2, 1961
3. Rejection MAY 3 1962
4. [illegible]
5. [illegible]
6. [illegible] NOV 23 [illegible]
7. [illegible]
8. Final Rej DEC 12 1963
9. [illegible]
10. Draft D(2) June 1-1964
11. [illegible] JUL 17 1964
12. LIST OF REFERENCES
13. Notice of Sus May 29, 1965
14.
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Dec. 29, 1964 J. B. TIGRETT 3,162,865

NURSERY UNIT

Filed July 17, 1961 2 Sheets-Sheet 1

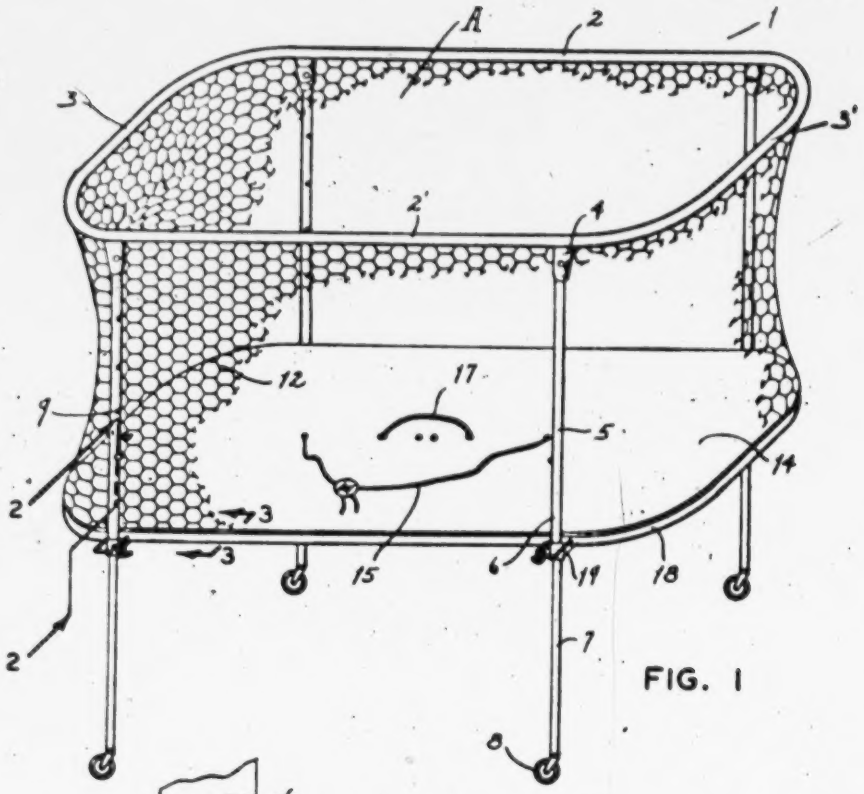

FIG. 1

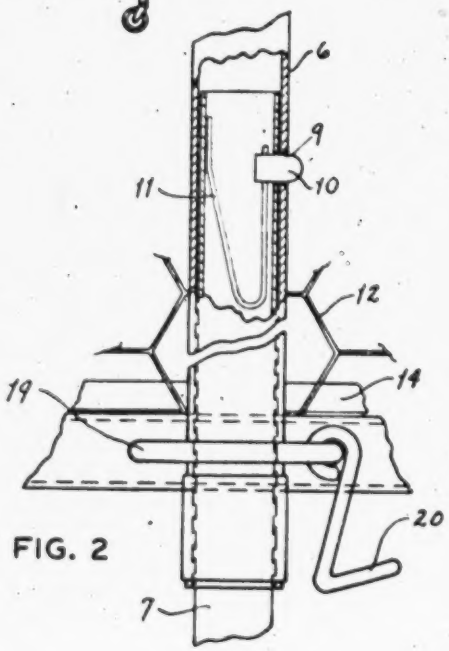

FIG. 2

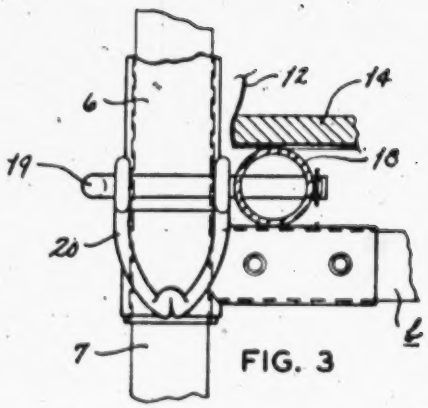

FIG. 3

INVENTOR
JOHN BURTON TIGRETT
BY Ralph M. Kalish
ATTORNEY

119a-1

United States Patent Office 3,162,865 Patented Dec. 29, 1964

3,162,865

NURSERY UNIT

John Burton Tigrett, Jackson, Tenn., assignor to Tigrett Industries, Inc., Jackson, Tenn., a corporation of Delaware

Filed July 17, 1961, Ser. No. 124,668
2 Claims. (Cl. 5—3)

This invention relates in general to infant equipment, and more particularly, to an article of nursery furniture.

It is an object of the present invention to provide a nursery unit adapted for multiple purpose usage, being so constructed for easy convertibility into a play pen, a baby bed, a dressing table, or a bassinet; and the operation of which does not require developed skill on the part of the user.

It is another object of the present invention to provide an article of nursery furniture having a simplicity of parts, and adapted for ready folding into either operative position of into a collapsed, compact unit for easy portability and storage in minimum space; the component parts being sturdy for long-lasting, hard, effective usage; and which is sufficiently light in weight for convenient manipulation by the average housewife.

A still further object of the present invention is to provide an article of nursery furniture which is versatile in usage; which can be most economically produced; and which is reliable and safe for infants.

Other objects and details of the invention will be apparent from the following description, when read in connection with the accompanying drawings (two sheets) wherein—

FIGURE 1 is a perspective view of a nursery unit constructed in accordance with and embodying the present invention, with portions of the netting being broken away, and showing the unit in full downward position for use as a play pen.

FIGURE 2 is a vertical view taken on the line 2—2 of FIGURE 1.

FIGURE 3 is a horizontal transverse sectional view taken on the line 3—3 of FIGURE 1.

FIGURE 4 is a bottom plan view.

FIGURE 5 is a side view showing the unit in upper position for utilization as an infant dressing table.

Referring now by reference characters to the drawings which illustrate the preferred embodiment of the present invention, A generally designates an article of infant furniture herein for sake of brevity referred to as a nursery unit, adapted for multiple purpose usage, comprising an upper, generally rectangular rim or frame 1 having side portions 2, 2' and parallel end sections 3, 3' and being fabricated preferably of light weight, tubular stock. Affixed to said upper rim 1 adjacent each corner portion thereof is a depending, short, mounting bracket 4 to each of which is pivotally engaged the upper end of a leg 5. Said legs 5 are of two-part construction comprising an upper tubular section 6 and a lower tubular section 7, the latter being of relatively reduced diameter for reception within the associated upper section 6 in telescoping relationship thereto. Carried at the lower end of each lower section 7 is a caster 8 for ease of maneuverability of nursery unit A. Upper leg section 6 is provided, substantially throughout its length with a plurality of vertically spaced openings 9 for selective extension therethrough of an adjustment, button-like member 10 resiliently mounted on a leaf spring 11 secured within the related lower section 7 adjacent the upper end thereof for urging adjustment member 10 outwardly for the reliable interengagement of said leg sections 6, 7 in any preselected axial relationship (see FIGURE 2). By forcing adjustment member 10 inwardly, by application of pressure thereagainst as by one's finger, within the erstwhile engaged opening 9 in the respective upper leg section 6, lower section 7 may be then limitedly rotated and thereon axially moved with respect to the associated upper section 6 until the selected relationship is effected. Thereon, the said lower section is returningly rotated to permit adjustment member 10 to spring outwardly through the adjacent opening 9 and hence thereby lock said sections together. Thus, legs 5 may be of any chosen length, such being dependent upon the convenience and comfort of the operator.

Sections 6 of transversely aligned legs 5 are interengaged by a cross bar b (see FIGURE 3), whereby each such pair of interconnected legs may be unitarily swung about the pivot at the upper ends of said legs between operative or extended position as shown in FIGURE 1 and folded or inoperative position (not shown) wherein said nursery unit A is collapsed into a compact form conducive to ease of transportability and to storage in minimum space.

Suspended from upper rim 1, throughout its extent, is a netting or mesh 12, as of nylon, fabric, or the like, and having an inherent resiliency, which is formed into general tubular or cylindrical shape, with its lower end edge being preferably bound, as at 13 (see FIGURE 4). Carried freely within said cylindrical netting 12 for disposition of its plane perpendicularly to the axis of said netting 12, is a base plate 14, being of rigid, relatively lightweight material, such as, pressed fiberboard, and the like, and having a marginal contouring desirably corresponding to that of upper rim 1 and being substantially of like dimension. The lower end portion of netting 12 extends inwardly beneath base plate 14 and the opposed margin portions of the lower edge of said netting 12 are connected by an elongated flexible member or drawstring, such as, of a length of string, rope, or the like, as indicated at 15, which is laced through openings in said netting and with its opposite ends passing upwardly through spaced openings 16 in base plate 14. The upwardly projecting free ends of said drawstring 15 are secured together to provide a convenient grip for pulling the lower end portion of netting 12 together, to take up any slack that may have developed during any converting operation so that the netting will be taut during usage.

There is also provided centrally of base plate 14 a handle member 17, as of rope, to facilitate manipulation of base plate 14, as may be required during adjustment of unit A.

Base plate 14 is restingly supported upon a rectangular lower frame or rim member 18, of similar shape and size as upper rim 1, being disposed in planar parallel relationship thereto; and being formed preferably of suitable tubular stock. Lower frame 18 is freely received upon cross bars b, inwardly of legs 5, and adjacent each leg 5 mounts a U-bolt 19 which extends laterally outwardly, each of which is in surrounding relation to the proximate legs 5 and on one side portion swingably mounts a hook member 20 adapted for engagement within an opening 9 of the upper leg section 6 of the said proximate leg 5, whereby said lower frame 18 may be supported by said legs in predetermined spaced relationship to the top rim 1, so as to, in turn, present base plate 14 at a desired elevation.

In usage, unit A is extremely versatile since by locating base plate 14 downwardly away from or upwardly toward top rim 1 the said unit may be converted into various distinct entities. Thus, as shown in FIGURE 1, with base plate 14 in full downward position unit A is accorded the character of a play-pen, with the distance between said plate 14 and top rim being sufficiently great to provide safety for an infant playing therein. In this condition netting 12 is fully extended and presents a yieldable, reliable side guard for an infant. It will be seen that

Dec. 29, 1964 J. B. TIGRETT 3,162,865

NURSERY UNIT

Filed July 17, 1961 2 Sheets-Sheet 2

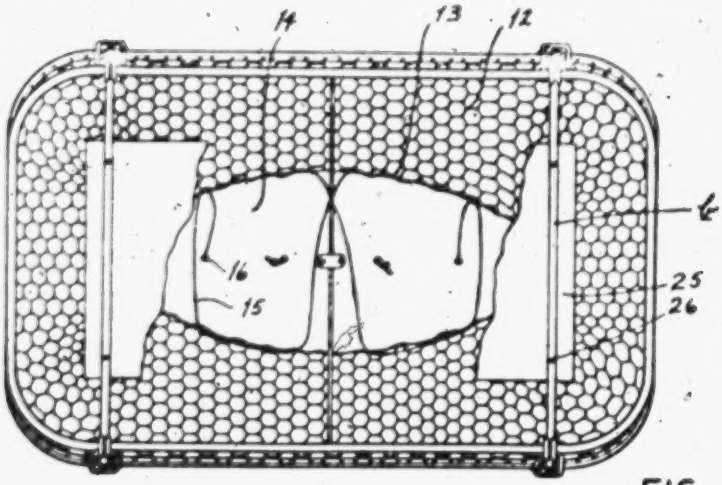

FIG. 4

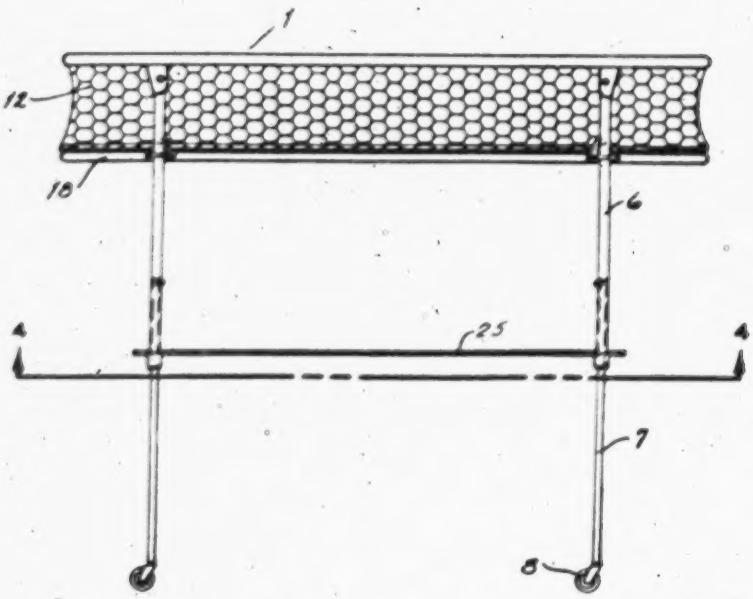

FIG. 5

INVENTOR
JOHN BURTON TIGRETT
BY Ralph M. Kalish

ATTORNEY

hooks 20 are in disengaged relation as lower frame 18 is in supported position on cross bars 5.

If it is desired to utilize unit A for an infant dressing table, such as shown in FIGURE 4, the user lifts upwardly on one end of lower frame 18 to present same for reception of the hooks 20 at such end in the uppermost opening 9 in the adjacent leg sections 6, and then similarly raises the other end and engages the related hooks 20 whereby base plate 14 will be disposed in horizontal position. In this condition there would, expectedly, be a considerable amount of slack in netting 12 and to correct such the user need only pull upwardly on drawstring 15 until the portions of netting between top and lower frames 13, 18, respectively, is substantially taut, as such operation pulls the lower edge of netting 12 together and thus contracts netting 12 for accommodating the particular condition of usage of unit A.

In similar fashion base plate 14 may be located at points between the positions shown in FIGURES 1 and 4 in order to adapt unit A for service as a baby bed and as a bassinet. The converting operation in each such case is in all respect similar to that above described in connection with the dressing table conversion, but with hooks 20 being engaged in opening 9 between the uppermost and lowermost of such openings to present base plate 14 at the appropriate level. This graded height control of base plate 14 is presented by unit A so that a similar article of furniture may now provide facilities heretofore obtained only by use of a plurality of such articles.

It is apparent that unit A may be easily collapsed into a compact unit for ready transportability or storage in limited space, such operation merely requiring the telescoping of the lower leg sections 7 within their associated upper sections with lower frame 18 together with base 14 being lifted upwardly into immediate contactive relationship with top frame 4 and then merely folding the two pair of legs toward each other into nestled relationship.

As shown hereinabove, lower frame member 18 will be supported upon cross bars 5 only when unit A is being used as a play pen, and in this condition hooks 20 will be in disengaged relation. However, as the bottom plate 14 is adjusted upwardly for other uses than as a play pen as described, the said lower frame 18 will be supported directly from legs 6 by means of the interengagement of hooks 20 within the related openings 9.

It is of course obvious that the base plate 14 is designed to receive a mattress or other type pad for infant comfort.

As may best be seen in FIGURES 3 and 5 an auxiliary shelf, indicated 25, may be provided for supported disposition upon cross bars 5. When unit A is used as a dressing table or as a baby bed, in which positions base plate 14 is located spacedly upwardly of said cross bars 5, said shelf 25 will be available for usage but with unit A in play pen position base plate 14 may be disposed upon said shelf 25 or the latter may be first removed. Said auxiliary shelf 25 may be of rectangular characteristic and secured upon cross bars 5 in any suitable, stable fashion such as, for instance, by means of screws 26. The said shelf 25 will necessarily be disengaged prior to folding of unit A into collapsed condition. Said shelf 25 thus provides a surface for holding the various articles necessary for proper baby care and attention.

In view of the foregoing it is obvious that the present invention is an extremely versatile device being capable of conversion for various infant usages and with such conversions being accomplished by the average housewife without the exercise of developed skill. Furthermore the nursing unit A is most maneuverable and is endowed with a simplicity of parts rendering it sturdy and stable in use and amenable to economical production.

It should be understood that changes and modifications in the formation, construction, arrangement, and combination of the several parts of the nursery unit may be made and substituted for those herein shown and described without departing from the nature and principle of my invention.

Having thus described my invention, what I claim and desired to secure by Letters Patent is:

1. An article of infant furniture comprising a top frame member, a base plate, a flexible netting having a general tubular form suspended from said top frame member and extending downwardly for receiving the said base plate and presenting same in normal planar relation to the axis of said tubular netting, said netting at its lower end extending inwardly beneath said base plate, drawstrings engaged in the lower end edge of said netting beneath said base plate, said base plate having a pair of spaced openings, said drawstrings being threaded upwardly through said openings in said base plate and being initially forcibly engaged above said base plate for providing a grip for convenient manipulation for said netting to elevate said base plate upward pulling on said drawstrings, a bottom frame member in plane parallel relation to said top frame member and disposed below said base plate for slippage thereof, legs engaged at their upper ends to said top frame member and extending downwardly therefrom, and means for engaging said bottom frame member to said legs.

2. An article of infant furniture as defined in claim 1 and further characterized by said legs being pivotally engaged at their upper ends to said top frame member for swingable movement between vertical in operative position, and horizontal in collapsed position, and said means for detachably engaging said bottom frame member to said legs comprising a plurality of leg surrounding elements fixed to said bottom frame member and extending downwardly therefrom, each leg having a plurality of vertically spaced apart openings, and a hook member swingably mounted upon each leg surrounding element for selected engagement within an opening in the proximate leg.

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Copy of U. S. Letters Patent No. 2,873,458

(Mounted opposite)

Feb. 17, 1959 J. Q. ADAMSON 2,873,458

COLLAPSIBLE PLAY PEN

Filed June 24, 1957

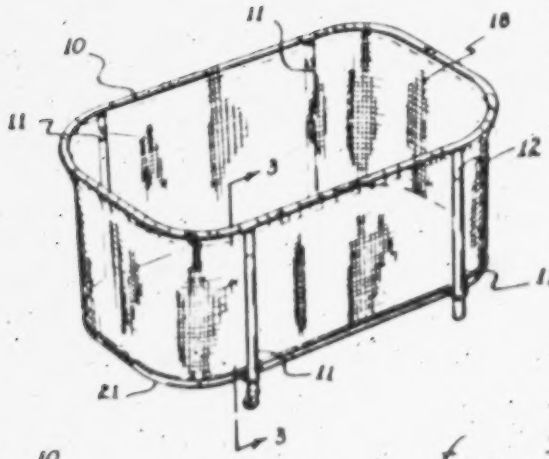

Fig. 1

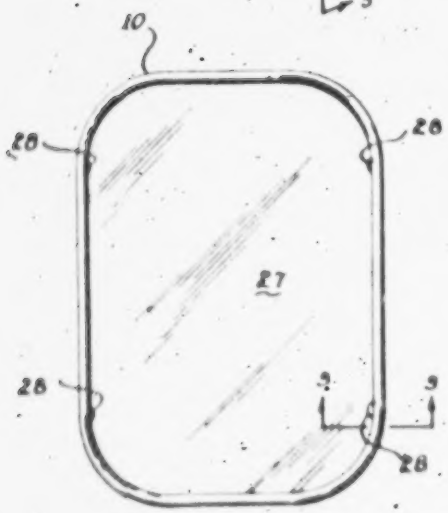

Fig. 2

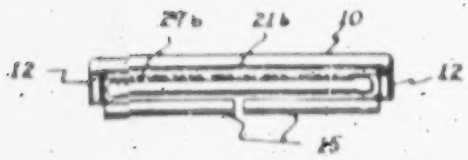

Fig. 4

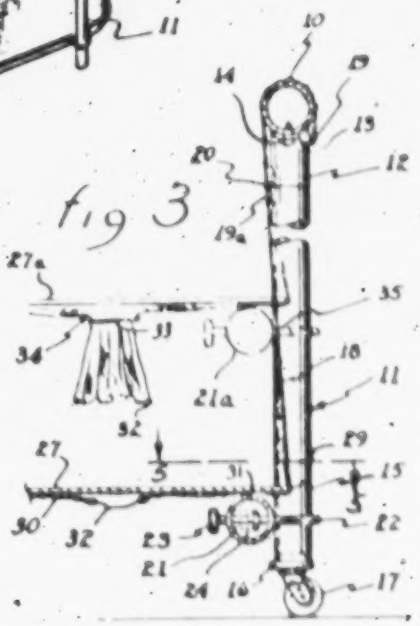

Fig. 3

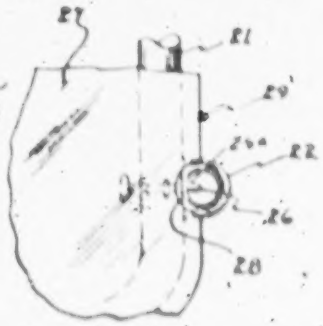

Fig. 5

INVENTOR.
JOHN Q ADAMSON

BY

Wilbur S Hamer

ATTORNEY

United States Patent Office

2,873,458

Patented Feb. 17, 1959

1

2,873,458

COLLAPSIBLE PLAY PEN

John Q. Adamson, Phoenix, Ariz.

Application June 24, 1957, Serial No. 667,030

1 Claim. (Cl. 5—98)

This invention pertains to collapsible play pens and is particularly directed to a foldable play pen of light weight but rugged construction.

One of the objects of this invention is to provide a collapsible structure which can be converted with a minimum of effort into a rigid upright unit.

Another object is to provide a collapsible play pen with a two position floor to convert the device from a play pen to a table like structure for holding the child in a more convenient elevated position.

It is also an object of this invention to provide a collapsible structure which can be loaded in a novel manner for storage or transportation of the unit.

A further object of this invention is to construct a play pen which can be readily and compactly folded.

Further features and advantages of this invention will appear from a detailed description of the drawings in which

Fig. 1 is a general perspective view of a collapsible play pen including the features of this invention.

Fig. 2 is a plan view of the device shown in Fig. 1.

Fig. 3 is an enlarged fragmentary section on the line 3—3 of Figs. 1 and 2.

Fig. 4 is an end elevation showing the device in collapsed condition.

Fig. 5 is an enlarged fragmentary sectional view on the line 5—5 of Fig. 1.

As an example of one embodiment of this invention there is shown a collapsible play pen having a top rail 10 which is supported on folding legs 11 consisting of the upper portion 12 rigidly secured to the underside 13 of the top rail 10 by screws 14 and the bottom portion 15 on the lower end 16 of which is mounted the usual caster 17. A suitable netting 18 is appropriately secured at its upper end by sewing or a tie cord 19 to the top rail 10 and extends downwardly inside the top rail 10 and the legs 11. The upper 12 and bottom 15 portions of the legs are hinged together by hinges 19a so that the bottom 15 may swing inwardly about the horizontal axes 20 of the hinges 19a.

Inside the legs 11 is provided the floor rail 21 which has a series of U shaped guides 22 fixed thereto which can slide up and down on the bottom portions 15 and upper portions 12 of the legs 11. Suitable latch pins 23 are provided in the floor rail 21 having suitable spring means 24 to normally urge the outer ends 26 of the pins 23 into the lower positioning holes 26a in the bottom portion 15 of the legs 11.

A floor member 27 is provided with notches 28 forming a clearance around the inner sides of the legs 11 and the webbing or netting 18 extends downwardly and over the outside edge 29 of the floor 27 and then inwardly between the underside 30 of the floor 27 and the top 31 of the floor rail 21 as best seen in Fig. 3. The lower edge 32 of the netting 18 is then drawn together by a suitable draw string 33.

The floor member 27 may be moved upwardly to an

2

intermediate position 27a if desired in which case the lower edges 32 of the netting 18 are drawn completely together and tied at 34. Fig. 3 and the floor rail 21 moved upwardly to the position 21a with the latch pins 23 being inserted into the upper positioning holes 35 in the bottom portions 15 of the legs 11. This provides a convenient working height for taking care of the child.

In Fig. 4 the device is shown fully collapsed with the floor member 27 in the position 27b up against the underside of the top rail 10 and the floor rail 21 in the position 21a up against the underside of the floor member 27 inside the upper portions 12 of the legs 11 so that the bottom portions 15 of the legs may be folded inwardly making a compact collapsed structure as best shown in Fig. 4.

While the apparatus herein disclosed and described constitutes a preferred form of the invention it is and is to be understood that the apparatus is capable of mechanical alteration without departing from the spirit of the invention and that such mechanical alterations and commercial adaptations as fall within the scope of the appended claim are considered to be included herein.

Having thus fully [illegible] what is claimed as new and desired to be secured by Letters Patent is:

A collapsible play pen comprising a horizontally disposed top rail, a series of collapsible upwardly legs supporting said top rail including vertically depending upwardly depending upper portions rigidly secured at their upper ends to the underside of said top rail, vertically disposed bottom portions engaging a floor, a hinge connection mounted on the lower inner edge of each said upper portion for vertical inward swinging movement of said legs and horizontally disposed abutment surfaces on the lower ends of said upper portions and the top ends of said bottom portions to limit outward swinging of said bottom portions to vertical aligned position with said upper portions, a horizontal floor member of load supporting rigid material having an outer edge vertically slidably fitting between the vertical inner surfaces of said depending legs when in vertically disposed position to positively hold said bottom portions in vertically disposed position until said floor is raised to fully up position above said hinge connections and inside of said rigid upper portions of said legs, a netting fixed at its upper edge to said top rail extending downwardly on the outer vertical surfaces of said upper portions and said vertically disposed bottom portions, said netting extending downwardly over said outer edge of said floor member, a floor rail vertically slidably fitting between said vertically disposed inner surfaces of said legs, means to said floor rail movable horizontally to engage said inside surfaces of said legs to vertically limit the position of said floor rail and floor member on said legs and draw string means in the lower edge of said netting located under said floor member for maintaining proper tension in said netting for any vertical position of the floor member on said legs, said upper portions of said legs projecting vertically downward from said top rail a distance equal to the vertical thickness of said floor member and said floor rail so that said legs may be folded vertically inwardly under said floor member and floor rail when said floor member is positioned up against the underside of said top rail.

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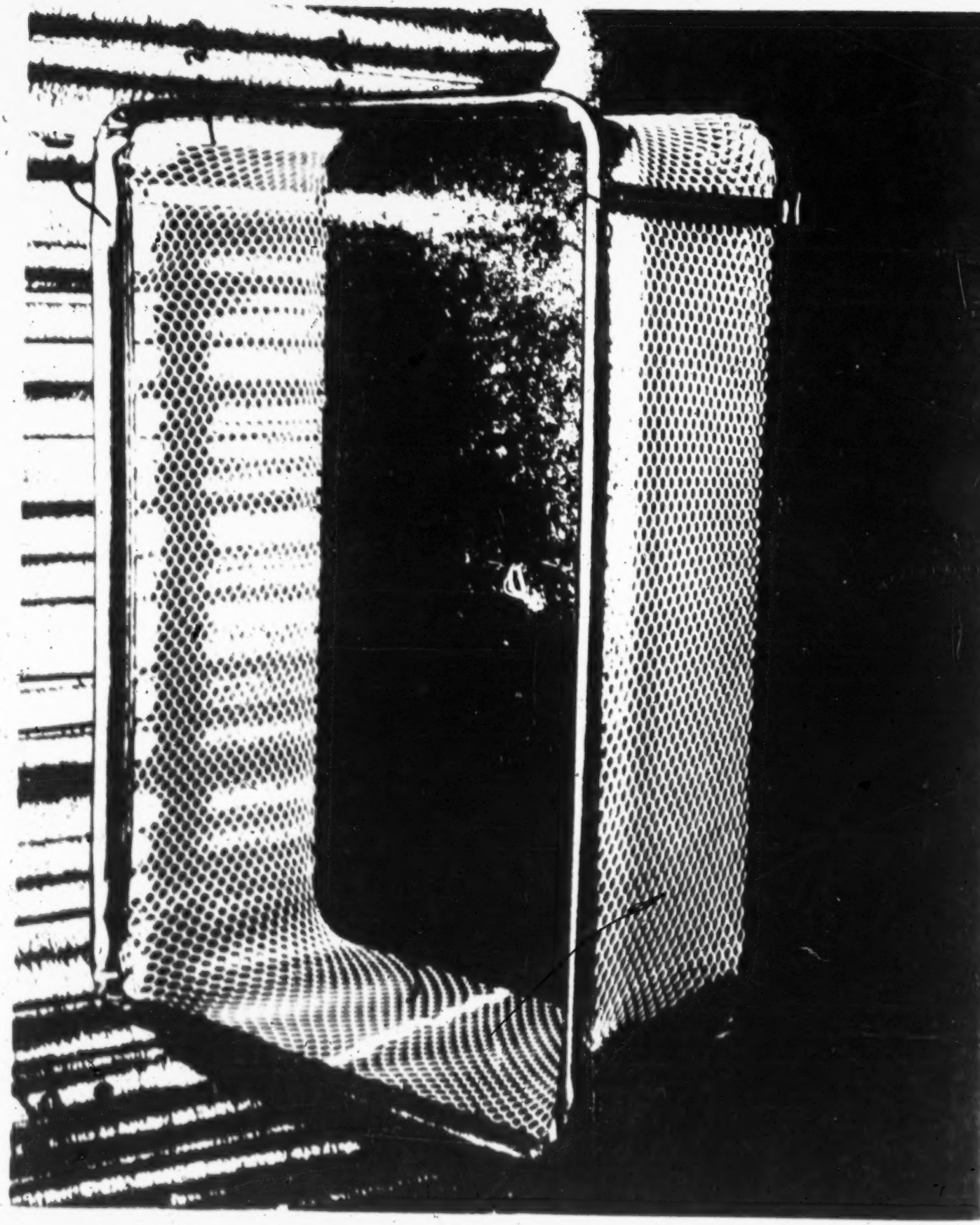
Plaintiffs' Exhibit 53

Photograph.



Plaintiffs' Exhibit 54

Photograph.

125a

Excerpt From Transcript of Proceedings

ing my tenure at Washington University, I was head the Department of Industrial Engineering, and the Department of Industrial Engineering included such things as production engineering, manufacturing processes, fabrication methods. I had charge of the shops, which included the fabricating shops, the tools and the gauge shops, and in industrial engineering they also covered such subjects as time and motion study, cost accounting and so forth.

The school at Washington University, while I was Dean, had between fifty and a hundred teachers, and they had between one thousand fifteen hundred students during that period. In 1961 I obtained a leave of absence arrangement from the University, which is still in effect.

Q. During that period of time, have you done any

outside consulting work in the engineering field at all? A. Yes. I have. I have done consulting for manufacturing companies, and I have testified in patent cases on such subjects and in such areas as electrical matters, metal cutting, structures, manufacturing processes, gauges, and tolerances that are used in manufacturing and also electrical relays.

Q. Dean Fischer, when you were practicing patent law from 1961 to '41, did you have any occasion at that time to draft patent applications? A. Yes, I did. In the six years that I was practicing I drafted a number of patent applications, and I was admitted to the practice before the Patent Office.

Q. And you had occasion to prosecute patents? A. Yes, I did.

Q. You mentioned the fact that you have testified in patent cases. Do you have any idea how many times you have testified in an expert? A. In the past twenty

the pictures, Figure 1, you can see one way in which the unit is used, and then if you turn over to Figure 5, you can see that it can be raised and made like a bassinet. It's not nearly as deep as it is in Figure 1, so it is a convertible unit, and the bottom can be raised and lowered.

This particular patent shows also that the legs are slidable, and they telescope, so that if you want to disassemble the device and put it in your closet or something, the legs collapse, and the bottom slides up and it makes a compact unit. There are some over there on the side of the courtroom that are in boxes. They are very flat that way. This unit, the unit we had before, the circular unit, is sort of automatic; so that when you lift up the bottom, the legs collapse. In this particular unit, the legs are folded under by the person using the unit itself. In the drawings in Exhibit 10, for instance, the top, there is a top frame, and it is numbered 1, 2 and 3. These are the numbers used on the drawing. The upper

(175)

frame is numbered as a numeral 1. Then, extending from the upper frame is the net, and it is evident where the net is from the drawings of the patent. Then, there is a lower frame at the bottom, and this lower frame is metal, and it can be seen on Exhibit 51, and above the lower frame is a base plate, and that's No. 14 in the drawing, and this base plate rests on the lower frame.

There are "U" shaped brackets on the side of the device, and I think I can use the device and show you better than the drawing. These "U" shaped brackets are fixed to the bottom frame and the "U" shaped brackets extend around the legs, so that you can move the bottom frame up and down, and on this "U" shaped bracket is a hook device, and I have it in my finger, and this hook device

can be placed in holes on the legs, and that holds the bottom frame in a particular position.

The Court: Can you adjust it to more than two depths?

The Witness: No, sir. In this particular device, it has two holes, so you can only have two holes. If you wanted more depth, you would have to put more holes.

The Court: If you have two holes, wouldn't you have three depths, two in the two holes, and

(176)

one when it is resting at the bottom?

The Witness: I would agree to that.

The Court: Show me a bassinet there.

The Witness: All right. We will change it to a bassinet.

Now, this is a bassinet, and then there is a draw string underneath the bottom plate, and this draw string is extended up. There are several draw strings. They extend up through a hole in the bottom, and if you pull on this draw string, you can tighten the net that goes around, and now we have it in the bassinet position, you see (indicating). I have held the draw string up tight, and I have tightened the net, and this is now in the bassinet position. This is Exhibit 51 in the bassinet position, and it looks like, of course, Figure 5 of the drawing of the patent, which shows the bassinet position.

Mr. Kalish: While you are off the stand, perhaps you might want to look at both structures, so you can see any distinctions between the two in order that your testimony may be directed to both of them at one time.

(177)

The Witness: I am now looking at Exhibit 3, and besides the difference in size, Exhibit 3—Exhibit 3's legs haven't been extended, so Exhibit 3 looks like it is lower, but it's legs extend by pressing in that button (indicating), and there the legs can be made higher. The essential difference is in the bottom frame members. You notice the bottom frame members on Exhibit 3 have a curved-in portion; whereas the bottom frame members on Exhibit 51 has just a straight bar along the side. There also is a slight difference in the method of lifting the bottom. There is a string handle on Exhibit 3, and on Exhibit 51 there are just two holes that you can put your fingers in, and aside from that, the two operate the same way.

The Court: Can you take up the string in the net in Exhibit 3, as in the other one?

The Witness: Yes, sir; just the same way.

The Court: I see.

The Witness: Now, refering again to the patent, I might mention that you can see the type

(178)

of U-bolt in Figure 1, and it's numbered 19 on the drawing, and it is hard to see the little hook. You have to go through Figure 2 to see the little hook, and it is numbered 20.

That's the little hook that I used to push in the hole in the side of the legs. The little hook is numbered 20, and the U-bolt is numbered 19 in the drawing, and they are the same as on the device that I just explained to the Court.

In the drawing there is a string handle, 17, to move the plate up and down.

Now, the only difference in operation is that in the patent they show the draw strings being brought up through two holes, rather than having the draw strings brought up through one hole.

By Mr. Kalish:

Q. Now, I have handed you Exhibits 53, 54 and 55, which have been stipulated to be photographs of the Golden Convertible produced by Jackson Furniture Company, and with the exception that the device depicted in those three photographs, which is all one and the same, does not have the indented portion on the base string, it does not have a

(179)

base string, as in Exhibit 3. I would like to have you note these photographs and then direct your attention to Figure 1.

Mr. Hochroth: May I object to the question as being leading? I don't know who is testifying at this point. We have gone through an entire explanation of what the witness may see.

The Court: I believe it was leading. I think Mr. Kalish was trying to push the thing along here.

Mr. Kalish: I wanted Your Honor to use this photograph as against Claim 1. We are well aware that the base string in the photograph does not have the indentations or the cord handle.

The Court: All right.

By Mr. Kalish:

Q. Directing your attention to the last page of Exhibit 10, Patent 865, and to the first numbered paragraph in

Column 4, bearing numeral No. 1, which is Claim 1, and ask if you would read that claim and make reference to Exhibits 53, 54 and 55, to point out to the Court the structures shown in the photographs Exhibits 53, 54 and 55.

The Court: Which one of those are you going to use to put your numbers on?

(180)

The Witness: I believe I can get by with just using one.

The Court: Which one?

The Witness: Exhibit 53. I may later refer to another, but I think not.

The claim states, "An article of infant furniture, comprising a top frame member.", and I am going to number that 21.

Then the claim goes on to state, "A base plate", and I will number that 22.

Then the claim goes on to state, "A flexible netting having a generous tubular form suspended from said top frame member." And I will number that No. 23. That's the netting—"And extending downwardly for receiving the said base plate." It just describes that the netting extends downwardly, and it, of course, goes down under the base plate—"And presenting same in normal planar relation to the axis of said tubular netting." All that means is that the base is perpendicular to the netting as plainly appears.

Then it goes on, "Said netting at its lower

(181)

end extending inwardly beneath said base plate." It says, "And" in there, but it should be "end".

• • •

(182)

The Court: All right.

The Witness: The netting extending under the base plate is shown in Exhibit 55, and I am going to number the netting on that exhibit 2, where it can be seen easily under the base plate.

Then, it goes on, "Drawstrings engaged to the lower end edge of said netting beneath said base plate." You can also see that better from Exhibit 55. The drawstrings are shown there plainly, and I will number those drawstrings 24.

By Mr. Kalish:

Q. Did you tell me a moment ago that you numbered the netting beneath the base plate? A. Yes—23. Then 24 is the drawstring.

Then the claim goes on to state, "Said base plate having a pair of spaced openings." Now, in the patent there are two openings through which the drawstrings go, and here (indicating), the drawstrings go through one opening, and I am going to number that opening 25.

Then the claim goes on to state, "Said drawstrings being threaded upwardly through said openings in

(183)

said base plate and being mutually fixedly engaged above said base plate for providing a grip for convenient manipulation for said netting to elevate said base plate by upward pulling on said grip."

Now, the grip I am going to number that 26. There is a button shown in the photograph, and this is sort of a thing that brings all drawstrings together. It holds them all together.

The Court: So you can pull them all at once?

The Witness: Right. So you get hold of that and pull them all at once.

Then the claim goes on to state, "A bottom frame member in planar parallel relation to said top frame member and disposed below said base plate for support thereof."

And that refers to the bottom frame member which you can see in Exhibit 55. It's just a metal frame, and I am going to number that 27.

Then the claim goes on to state, "Legs engaged at their upper ends to said top frame member and extending downwardly therefrom."

(184)

You can see that the legs are engaged at their upper ends to the top frame member, and I will number the point where they are connected 28, and the claim states that they extend downwardly therefrom, which is obvious.

Then the claim states, "And means for engaging said bottom frame member to said legs." Well, that's the U-bolt, and I will number them 29.

By Mr. Kalish:

Q. Now, before going further, I direct your attention to Exhibit 3, wherein the base frame carries on opposite sides two aligned indented portions, and I will ask you whether or not the provisions of those indented portions in any way renders the base frame in this exhibit in non-planer parallel relation to the top frame? A. No, it does not. That exhibit operates the same in the parts that I read from the claim as does the Exhibit 50.

Q. Would you explain to the Court, just to be sure there is nothing misunderstood, the term "planar parallel"? A. That means that one plane is parallel to another plane, that there is a plane that is parallel to something

(185)

else.

Q. So, the indentation—— A. (Interrupting) They don't affect that wording whatsoever.

Q. Are they still on the same plane as the base frame? A. Yes, they are.

Q. Now, Dean Fischer, you have noted that in the structure of Jackson Furniture, Exhibits 3 and 51, they contain but a single opening for the drawstrings; whereas the particular language of Claim 1 of the Patent 865, Exhibit 10, recites that the drawstrings are pulled up through a pair of spaced openings. Now, is there any difference in the openings between the structure claimed and either one of the structures set forth here, Exhibits 3 and 50? A. There is no difference in the operation of the structure. It doesn't matter whether you bring the ends of those drawstrings up through two holes, or even three holes, whether you bring them up through one hole as long as you pull on the drawstrings and tighten up the net.

Q. Would it be your testimony, or not, that the structures'

(186)

Exhibits 3 and 51 do substantially the same work in substantially the same way to accomplish substantially the same results?

Mr. Hochroth: I object to the question as leading, Your Honor, if I may.

The Court: He said, "Whether or not", objection overruled.

The Witness: In my opinion, they do. They do the exact same work in exactly the same manner and in the same way, and whether you put the drawstrings through one hole or two holes, makes no difference in the operation of the device and in both cases it lifts up the bottom and tightens the net in the same manner.

By Mr. Kalish:

Q. I now direct your attention to Claim No. 2, and ask you if you would explain first to the Court what a dependent claim is, and then go on and compare the structure defined in Claim 2 to the structures of Exhibit 3 and Exhibit 51. A. Well, a dependent claim is a claim that refers back to another claim, and instead of writing the whole thing, they just say that it is the same that is in Claim 1,

(187)

and then they have additions, and that's what this claim is.

Q. Does the dependent claim incorporate all the limitations of the parent claim? A. Yes, it does.

Q. Now, Claim 2? A. Claim 2 states, "An article of infant furniture as defined in Claim 1 and further characterized by said legs being pivotally engaged at their upper ends to said top frame member for swingable movement between vertical or operative positions and horizontal or collapsed position." What that says is that those legs are pivoted to the top frame, so that you can swing them parallel to the top frame, and you can put them down in vertical position, as we have on the exhibit

there, and I have already numbered the pivot joint 28 in Exhibit 53, and Exhibit 51 has just been folded to demonstrate that the legs are pivoted on the top frame just like the claim says, and they can be folded into a non-operative position for storage.

Then the claim goes on to state, "And said means detachably engaging said bottom frame member to said legs comprising a plurality of leg-surrounding elements." Now, this is that U-bolt construction, and I have numbered

(188)

the U-bolt 29, and what this claim is doing now is getting more specific about the U-bolt, so it said "And said means detachably engaging said bottom frame member to said legs comprising a plurality of leg-surrounding elements fixed to said bottom frame member and extending outwardly therefrom", and that's what the U-bolts do. If I might show you on Exhibit 51—the U-bolts are fixed to the bottom frame member, and then they extend around the legs, and you can see that lets it slide up and down and that's what this claim just stated.

The Court: You better give that a number on your Exhibit 55.

The Witness: I have used 29 for that U-bolt, and you can see it in Exhibit 55 so I am going to use the same number, 29, here (indicating).

Then the claim goes on to state, "Each leg having a plurality of vertically spaced apart openings," and those are the holes that I stuck the hook in, and you can see that from Exhibit 51. The holes are on the inside of the leg, and that's where you stick the hook, and on

(189)

the photographs you can see one of the holes, on Exhibit 54, and I will number it 30, and, of course, there were two in each leg, and they are spaced apart vertically as the claim states.

Then the claim goes on to state, "And a hook forming member swingably mounted upon each leg-surrounding member for selected engagement within an opening in the proximate leg."

And that refers to the hook that I pushed in the hole, and I am going to number that 31 on the drawing, Exhibit 54, and I am also going to number it on Exhibit 55, since the hook might show up a little better there.

The Court: As 31?

The Witness: Yes, sir. Then, that completes the claim.

By Mr. Kalish:

Q. With respect to Claim 2, Dean Fischer, of Patent 865, Exhibit 10, in your opinion, or what is your opinion as to whether or not the structures marked Exhibit 3 and 51 do substantially the same work in substantially the same way, and accomplish exactly the same result as the structure

(190)

defined in Claim 2? A. That is my opinion, that the Exhibit 51 and Exhibit 3 operate in the same manner, and they accomplish the same result as does the 865 patent.

Q. With respect to the 978 patent, you testified that Exhibits 50 and 1 differed in that Exhibit 50 had a pair of holes in the base plate; whereas, Exhibit 1 had a cord handle. You recall that testimony? A. Yes.

Q. Now, would that distinction in your estimation in any way affect your opinion as to these structures that you read on Claim 1 of Patent 978? A. Absolutely not. In the part I read from the claim, it says nothing about how you lift the base plate at all, and it's obvious to anyone that you can raise the base plate by putting your fingers in two holes, or by raising it with the handle. It's the same purpose.

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(191)

Cross examination by Mr. Bader:

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(193)

Mr. Bader: All right, Your Honor. I will withdraw the question under those circumstances.

Q. I would like to get back to the 978 patent, Mr. Fischer. Now, in the 978 patent, Claim 1 calls for an annular frame member. A. Right.

Q. I take it that if the frame member were square, that would not read on the structure? A. Well, that would depend—you mean in this particular case?

Q. Assuming that this play pen were made in a square array, rather than a round array, Claim 1 would not read

(194)

on it?

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(195)

By Mr. Bader:

Q. Mr. Fischer, you are familiar with patent law, of course. You have worked on patents quite a while? A. Yes.

Q. And, as you know, in order to infringe upon them, you have to utilize every element contained in that claim, isn't that so? A. Yes.

Q. And, therefore, Claim 1 here calls, as you notice, for the leg members to be secure at the base point on the annular frame member. A. You are reading Claim 5.

Q. I have pointed to Claim 5, but I am reading Claim 1—"A plurality of normally depending legs pivotally secured at one end at spaced points on said annular frame member." A. Yes.

Q. Now, these, of course, are spaced points (indicating)? A. Right.

Q. Now, what does space mean? A. Space means that they are separated.

Q. And if they were together, they would not infringe, would they? A. Then they wouldn't be spaced, right.

(196)

Q. Now, can you come over here, Mr. Fischer? With respect to the 865 patent, I hand you your 865.

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(202)

Q. Now, Mr. Fischer, in reading Claim 1 of the 865 patent and referring now, since we have the mattress off, to Exhibit 51, the claim 1 requires that the base plate has to have a pair of spaced openings for the drawstring, doesn't it? A. That's what this claim states, yes.

Q. What does spaced mean? A. They are separated.

Q. Are these openings separated, or are they together? A. There are two that are separated, but the one the drawstring goes through is one opening.

Q. So, actually, the term of the claim "spaced open-

ing'' is not met by this structure, is it? A. My statement was that the equivalent was in the structure, but not the exact word.

Q. We will get to the equivalent later, Mr. Fischer. I am merely now stating the technical situation, that the technical terms of the claim are not met by this structure, are they, because the claim calls for a pair of spaced openings and here there is only one?

(203)

A. Insofar as that last is concerned, that is true, the claim calls for spaced openings, and there is only one, but you have to—I mean that has to be subject——

Q. Just a moment.

Mr. Tomlin: Let him finish.

The Court: Just a minute. I think, Dean Fischer, that he is going to get into the question of equivalence later. He is asking a simple question, which is self evident, which is whether two holes are the same as one, and you said no.

By Mr. Bader:

Q. Nor is the single hole here spaced, of course? A. No. There are spaced holes, but as far as the string going through holes, they are not spaced openings.

Q. That's what the claim calls for, doesn't it? A. That is right.

Q. And the claim calls for these strings to go through holes to be mutually fixably engaged above the base plate for providing a grip? A. Right.

Q. Now, that means the strings themselves have to provide the grip, doesn't it?

(204)

A. Yes, and that's done in the device.

Q. Now, here we have an auxiliary, don't we? The strings don't provide the grip? A. Yes, sir, they do. You didn't lift it up before that way. You put your whole hand on the strings and pulled.

Q. Are these strings mutually engaged to one another? A. Yes, by that button.

Q. But I am saying are they joined together by themselves without the use of the button? A. You would have to take the button off to see if they are tied together. I think some of them are tied together—there they are tied together. So, they are mutually and fixedly intact.

Q. So, these are fixedly engaged to one another in your opinion? A. They are.

Q. Now, Mr. Fischer, are you aware of what the doctrine of file wrapper estoppel is? A. Yes.

Q. What does it mean? A. It means if you say something in the file wrapper that you later can't repudiate this.

(205)

Q. Meaning, for example, if, during the course of prosecution the spaced openings were claimed as a feature in order to avoid prior art references, you could not say now that the spaced openings were an immaterial part of the structure?

Mr. Tomlin: If Your Honor please, just a minute. He asked Mr. Fischer if he knew, and then he told him what it was.

The Court: Well, he can ask a leading question.

The Witness: That's not exactly my understanding. My understanding would be if you made an

argument and you said that this was entirely different from all the other patents because there are two openings and the two openings produce a difference in operation and the attorney went on and on about the two openings providing a big difference over the prior art, then he couldn't come in later and say that the openings didn't make any difference. The mere fact that they appear in the language of the claim as presented to the Patent Office doesn't furnish estoppel, in my understanding.

(206)

Q. But, if they are referred to in order to provide prior art reference as a point of distinction, then, of course, file wrapper estoppel would apply? A. I repeat what I previously said—they would have to be referred to and tied in with the prior art as a point of distinction and relied on. They would have to be relied on as making the big difference. Just the fact that they appear wouldn't make that an estoppel.

The Court: I believe the question is more precisely, Dean Fischer, if the applicant relies on the spaced openings specifically to avoid prior art references, then does the estoppel work?

The Witness: If he relied on this specifically and that alone, to avoid, then the estoppel would work in my opinion.

By Mr. Bader:

Q. Now, this is the original Claim 1 of the patent. Is there anything in that original claim about any spaced openings? A. No.

Q. Now, there was an action by the Patent Office and apparently the prior reference that was relied on was the

(207)

patent to Adamson, as you will note. There were other references, of course, but apparently Adamson was the principal one relied on by the Patent Office—that's a fair statement, isn't it, Mr. Fischer? A. I am just reading this (indicating).

Q. I don't want to be unfair to you. Adamson was actually the prior reference relied on? A. In this action, I would say yes.

Mr. Kalish: Would you identify the action, please, for the record?

Mr. Bader: This is the office action, which is Paper No. 3 mailed May 3, 1962, and it is actually pages 16 and 17 on the file history, the Exhibit with the blue ribbon on it.

Q. Now, in response to that there was an amendment filed, which is Amendment A? A. Right.

Q. And, now I would like you to read Claim 8, but please ignore the interlineations put in later, and just confine yourself to the original Claim 8, as presented, and I ask you whether in that Claim 8, spaced openings now appear? A. Yes. It states in the claim, "Said base plate

(208)

having a pair of spaced openings", but the——

Q. Don't qualify the answer at this point. I just asked the question. Your counsel will certainly bring this out in redirect, I am certain.

Mr. Tomlin: If Your Honor please, I would like to insist that any answer of this witness that requires explanation that he be permitted to give it, instead of relying solely upon redirect examination.

The Court: Well, I suppose that's true if it requires an explanation. The witness did not seem to think it did.

Mr. Tomlin: But counsel is trying to limit his testimony, and I did not want the Court to permit that.

Mr. Bader: I did not intend to do that, Mr. Tomlin. If the witness had felt an explanation was necessary, I certainly wouldn't ask him when did he stop beating his wife.

The Court: Go ahead, and let's move along.

By Mr. Bader:

Q. Now, would you read to me the remarks that were made by Mr. Kalish in the prosecution of this application

(209)

when Claim 8 was presented? A. Yes.

Q. In toto, please. A. (Reading) "Claims 1 to 7 have been canceled without prejudice and in lieu thereof, there have been submitted Claims 8, 9 and 10, which seek to define in more definite fashion the especial advance made in the art by applicant. Thus, Claim 8 differs from the preceding claims and references of record in defining an article of infant furniture comprising a top frame member, a base plate, a flexible netting having a general tubular form, a bottom frame member and with said flexible netting extending beneath the base plate with drawstrings engaged at the lower end of said netting and extending

through openings in the base plate for mutual securement to allow for convenient manipulation of the base plate."

Q. You need not read any further at this point.

The Court: Which patent are we talking about now?

Mr. Bader: We are talking about the 865 patent, which is Exhibit 10, Your Honor, which involves these structures here (indicating).

(210)

We call this, for convenience, the Golden Convertible.

Q. Now, then, there was another office action in the case with a further rejection and apparently again in this case, would it be fair to say that Adamson again was relied on as the principal reference together with others? A. They relied on Adamson again, right.

Mr. Kalish: What was the date of that action, please?

Mr. Bader: November 23, 1962, and pages 22 and 23 of the Certified History of the File Wrapper.

Q. Now, would you read Claim 8, as amended, and would it be fair to state now, that Claim 8 was now amended by the applicant to avoid the rejection by stating that the drawstrings now extended beneath the base plate, that the drawstrings were threaded upwardly through the openings in the base plate, and they were mutually fixably engaged above the base plate, and that they provided not a handle, but a grip for convenient manipulation for the netting to elevate the base plate by upward pulling on the grip?

Those were the charges that were made, were

(211)

they not? A. No. Because you read over again what was printed and that wasn't a change.

Q. Then, I have been unfair. Let me go over the changes again.

In line 8 of the claim, after the word "netting", the words, "beneath said base plate" were added. In line 9, after the word "threaded", the word "upwardly" was added? A. That is right.

Q. In line 10, after the word "engaged" the words "above said base plate" were added? A. That's right.

Q. In line 11, the word "handle" was canceled, and the word "grip" was substituted? A. Right.

Q. And in line 12, after the words "base plate", the words, "by upward pulling on said grip" were added? A. Yes.

Q. Apparently, there must have been a further amendment. I think it was "handle" originally, and then "grip" may have been substituted, but it is not material at this point?

(212)

A. That's right.

Q. Now, would you read to me the remarks that Mr. Kalish submitted at that time? A. This is from Amendment B, and the date received in the Patent Office is May 13th, 1963——

(Reading) "Claim 8 has been amended to recite that the drawstrings are engaged to the lower end of the netting below the base plate and that said drawstrings are threaded upwardly through the openings for mutual engagement above the base plate, and that the same by pulling upwardly thereon will effect elevation of the base plate. It is submitted that said claim, as now amended,

clearly defines patentable subject matter over the references of record. The examiner will recognize that applicant's clever and ingenious use of the strawstrings provides a readily accessible expedient for elevating and lowering the base plate. Such means do not necessitate the user's having to work beneath the base plate, as would be required in the Adamson construction. Thus, one would have to operate the drawstrings of Adamson from beneath the base plate rather than from above same, and it is very obvious that such could only be highly inconvenient and cause one to be resistant to vertically adjusting the base plate.

(213)

The May, et al, reference is not pertinent, since the same merely shows the tying together of the cords 19. The mutually engaged ends of such cords are not adapted to provide a handle for effecting any operative movement of any part, or parts, of the cradle. The cords of May, et al, are merely means for supporting the fabric members 18 and to allow of its removal for cleaning purposes."

Q. Thank you. Now, could you step down for one moment, please, Mr. Fischer. I only have two or three more questions. I would like to refer back now to Exhibit No. 3.

Now, in connection with the patent involved—I am going to use the file history, rather than the patent itself, and I would like you to read a section for me.

Would you read into the record, please, lines 47 through 51 of the patent, starting with "Base plate 14"?

The Court: Are we still dealing with 865?

Mr. Bader: Yes, Your Honor. I have finished with the other patent. We are dealing with 865

alone, and I am not going to get back to the other patent, Your Honor, and I am almost finished with my cross-examination.

The Court: All right.

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(218)

Redirect examination by Mr. Kalish:

Q. I hand you now, Dean Fischer, a copy of Patent No. 458, which is the Adamson patent, referred to in the file history, Exhibit 45, this being Exhibit 57, and I direct your attention also to page 24, Exhibit 45, which is the amendment wherein Claim 8, which I think became Claim 1 after the patent was amended, and I ask you to advise the Court as to the nature of the Adamson structure from the standpoint of drawstrings as alluded to in that amendment? A. In the Adamson patent there are some drawstrings, 32, but they are underneath the base plate. They don't come

(219)

through in any manner, through one hole or through two holes. They don't come through.

The Court: How do you use the drawstrings?

The Witness: Reach underneath.

The Court: And pull them down?

The Witness: Yes, sir, pull them down.

By Mr. Kalish:

Q. Now, will you advise the Court as to how Claim 8 was amended in that amendment? A. It says, "Claim 8

has been amended to recite that the drawstrings are engaged to the lower end of the netting below the base plate and that said drawstrings are threaded upwardly through the openings for mutual engagement above the base plate, and that the same, by pulling upwardly thereon will effect elevation of the base plate. It is submitted that said claim, as now amended, clearly defines patentable subject matter over the references of record."

Of course, in the Adamson patent, if you pull down, you couldn't raise the base plate with the strings,

Q. Then, in viewing that particular amendment whereby, as I understand, the Patent Office then allowed the claim, would you advise the Court as to just what area in which you think the plaintiffs would be estopped by the file

(220)

wrapper?

Mr. Hochroth: Your Honor, I object to the question. I think this is purely within the Court's determination.

The Court: Well, your patent lawyer is pulling you down, and I think he is right. This is a matter of expert opinion.

The Witness: If a structure came along and had the drawstring underneath, and you had to operate the drawstring underneath, and then you tried to make these claims and say they were equivalent by saying there is no difference between underneath and on top, then it's pretty obvious that what has been said here would certainly contradict that, because what has been said here says this is a difference between whether you have it on top, or whether you have it underneath.

By Mr. Kalish:

Q. Is it your testimony that the file wrapper estoppel would relate to the drawstrings being engaged above the base plate? A. Yes.

(221)

Q. Is it your testimony, or not, in respect to the limit of claim 8 that the number of openings that may have now been recited in that claim are critical to overcome the Adamson patent? A. In my opinion, the number of openings that you brought the string through were not critical to overcome the Adamson patent.

The Court: Why is that?

The Witness: The Adamson patent had an opening, but the strings came down below the opening, and the big argument to overcome the Adamson patent was if you used the Adamson you had to go underneath and reach and pull down; whereas, if you did what the invention did, you could pull the strings from on top, which is easier, and also when you pull the strings from on top, it would raise up the base plate, instead of pulling down the base plate.

The Court: If, in the Adamson patent you had to reach from below to get the drawstrings, what would be the function of the hole——

The Witness: There is no hole.

The Court: I didn't think there was, but

(222)

I thought you said they had it.

The Witness: I am sorry if I did. There is no hole to pull it through.

The Court: So the question the Court asked is—

is the reason you say the two holes, which are spaced, is not critical as against the Adamson patent, because the Adamson patent had no holes through which to pull the strings?

The Witness: That is right.

The Court: Go ahead.

By Mr. Kalish:

Q. Figure 2 shows the base plate in Adamson? A. Yes.

Q. 27 is the base plate? A. Yes.

Q. And there are no holes in the base plate of Adamson? A. No.

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(223)

Recross examination by Mr. Bader:

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(224)

Q. Then, why isnt' it important that spaced openings be provided in the base plate? A. Because it's obvious whether you bring the strings up through one opening or two openings, that you accomplish the same results. You could put them through three and it

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wouldn't make a bit of difference. But whether or not the frames are parallel, you can see that you would have a cock-eyed cage for the child or bassinet if you had the frames that aren't parallel. There is a big difference between the two.

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Thomas Fletcher Talbot—for Defendant—Cross

(228)

THOMAS FLETCHER TALBOT

The said witness, having been first duly sworn, testified as follows:

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(237)

Cross examination by Mr. Kalish:

Q. Referring now to Exhibit 10 and Exhibit 51, to which you have been testifying, I ask you whether or not the drawstrings indicated, 15, in Figure 1 are indicated there? A. Right.

Q. I ask you whether they serve the same function as the drawstrings which I have my hand on now, these strings coming through the hole in Exhibit 51? A. The string, 15, serves the same function as the four strings you have your hand on.

Mr. Kalish: That is all, Your Honor.

Mr. Bader: You are excused.

(Witness excused.)

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